

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF LTD BROADBAND LLC FOR A)
CERTIFICATE OF TERRITORIAL AUTHORITY) Cause No. 45519
FOR COMMUNICATIONS SERVICE PROVIDERS)

SUBMISSION OF SUPPLEMENTAL PROPOSED ORDER

Pursuant to 170 IAC 1-1.1-23(b), New Lisbon Telephone Company, Inc. and New Lisbon Broadband and Communications, LLC (collectively, “New Lisbon”) hereby submits its supplemental proposed order which incorporates evidence admitted during the May 28, 2021, reopened evidentiary hearing in the aforementioned Cause. In light of the Commission’s intent to consider this Cause at its June 2, 2021 Conference and to assist with the Commission’s expedited review of this new evidence, New Lisbon has used red text to identify the primary supplements to its May 21, 2021 proposed order. An editable version will be emailed to the administrative law judge assigned to the proceeding and all parties of record.

Respectfully submitted,

By: /s/ Jeremy L. Fetty

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been electronically served upon the following on
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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF LTD BROADBAND LLC)
FOR A CERTIFICATE OF TERRITORIAL)
AUTHORITY FOR COMMUNICATIONS) CAUSE NO. 45519
SERVICE PROVIDERS)

ORDER OF THE COMMISSION

Presiding Officer: James Huston
Loraine Seyfried, Administrative Law Judge

On March 15, 2021, LTD Broadband LLC (“LTD or Applicant”) filed with the Indiana Utility Regulatory Commission (“Commission”) its Application for a Certificate of Territorial Authority (“CTA”) for Communications Service Providers. That same day, LTD filed its Motion for Confidential Treatment, which was granted by the Presiding Officers on April 6, 2021. On April 1, 2021 New Lisbon Telephone Company, Inc (“NLTC”) and New Lisbon Broadband and Communications, LLC (“NLBC”) (collectively “New Lisbon”) filed a Verified Request for Hearing. On April 19, 2021, New Lisbon filed Motion to Compel Discovery and Motion for Extension of Time to File Testimony and Exhibits and on April 21, 2021 New Lisbon filed another Motion for Extension of Time to File Testimony and Exhibits in light of the pending attorney’s conference set for April 22, 2021 to discuss the Motion to Compel Discovery. On April 21, 2021, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its Notice of Intent Not to File Testimony. On April 22, 2021, the presiding officers conducted an attorney’s conference with the parties relating to New Lisbon’s Motion to Compel Discovery, and then issued a Docket Entry Re Attorney’s Conference and Procedural Schedule, granting in part and denying in part New Lisbon’s Motion to Compel and amending the procedural schedule. On May 3, 2021, New Lisbon filed the Direct Testimony of John E. Greene Jr.. On May 7, 2021, the Commission issued a docket entry requesting additional information filed by LTD and on May 10, 2021, LTD filed its Response to Presiding Officers’ May 7, 2021 Docket Entry Question. On May 12, 2021, LTD filed the Verified Rebuttal Testimony of Corey Hauer and its Submission of Corrected Attachment 2 to CTA Application.

The Commission set this matter for an Evidentiary Hearing to be held on May 19, 2021, at 1:00 p.m. in Room 224 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. A docket entry was issued on May 14, 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 and New Lisbon, by counsel, participated in the hearing via video conference. The testimony and exhibits of Petitioner were admitted into the record

without objection. New Lisbon's prefiled direct testimony was admitted into the record as New Lisbon Exhibit 1 without objection. In addition, New Lisbon's cross exam exhibits, including CX1 – CX16, CX17C, CX18C, and CX19C were admitted into the record.

During the May 19, 2021 evidentiary hearing, New Lisbon offered a confidential cross exam exhibit marked CXC and sought to cross exam LTD's witness regarding cost estimates and financial obligations incurred by LTD in the buildout of its Indiana network and networks in other states under the RDOF program. LTD objected to the admission of this information into the record, and the Presiding Officers sustained the objection. New Lisbon appealed the Presiding Officers' sustainment to the full Commission ("Evidence in Dispute"). New Lisbon filed its brief in support of the admission of the Evidence in Dispute on May 20, 2021. Upon review, the full Commission upheld New Lisbon's appeal regarding the admissibility of the Evidence in Dispute, reversed the ruling overruling the objection, and directed the record be reopened for the sole purpose of allowing the response to the question and follow-up questions directly related thereto. The reopened evidentiary hearing was held on May 28, 2021 at 9:30 a.m. via WebEx. During the May 28, 2021 reopened evidentiary hearing, New Lisbon's cross exam exhibits CX 20C and CX 21C were admitted into the record, and additional cross examination of LTD's witness was conducted.

Based upon the evidence admitted in this Cause and applicable law, the Commission makes the following findings:

1. Commission Notice and Jurisdiction. Due, legal, and timely notice of the Application was given and published by the Commission in accordance with General Administrative order ("GAO") 2019-6 and Ind. Code § 8-1-32.5-9. Applicant requests the issuance of a CTA pursuant to Ind. Code ch. 8-1-32.5 and, therefore, the Commission has jurisdiction over Applicant and the subject 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 approximately 16,500 customers in Iowa, Kansas, Minnesota, Nebraska, South Dakota and Wisconsin. It does not currently serve any customers in Indiana.

3. Intervenor's Characteristics. New Lisbon Telephone Company, Inc ("NLTC") is an Indiana corporation organized under the laws of the State of Indiana with its principal offices located at 6369 East Dublin Pike, New Lisbon, Indiana, 47366. NLTC is an Indiana incumbent local exchange carrier ("ILEC") in its authorized service territory. New Lisbon Broadband and Communications, LLC ("NLBC") is an Indiana limited liability company with its principal place of business at 6369 E. Dublin Pike, New Lisbon, IN 47366. NLBC is a competitive local exchange carrier ("CLEC") and wholly

owned subsidiary of NLTC. NLBC is a CLEC providing voice, video and broadband services in Henry, Wayne and Randolph counties. NLTC and NLBC both provide facilities based local exchange service in areas identified in LTD's CTA application.

4. LTD Broadband LLC's CTA Application

LTD filed its Application for a Certificate of Territorial Authority ("CTA") for Communications Service Providers on March 15, 2021 docketed as Cause No. 45519. In its application LTD indicated it intends to provide telecommunications service as defined in 47 U.S.C. §153: interconnected VoIP service, dedicated transport telecommunications services, facilities based telecommunications service. LTD also indicated it intends to provide information service as defined in 47 U.S.C. §153: internet access service, broadband service. LTD provided applicant contact information in Section I, including a legal name, company address, mailing address, and contact person. In Section II LTD provided information about its services and indicated the geographic area for which LTD seeks authority is all counties in Indiana. LTD indicated its estimated date of deployment for each communications service identified in its application is Quarter 3 to Quarter 4 of 2021. LTD indicated it seeks to offer facilities based local exchange service and plans to offer both wholesale and retail service. Finally, LTD indicated the other states in which it is authorized to provide communications services include Minnesota, Iowa, Illinois: interconnected VoIP and internet access. In response to Section IV, LTD provided attachments including, a copy of LTD's foreign registration statement from the Indiana Office of the Secretary of State, dated March 3, 2021, a biography of CEO Corey Hauer and a list of five (5) other employees of LTD. On May 12, 2021 submitted a correct attachment 2 to its CTA application in which it added one (1) person to its list of employees (Jim O'Regan) and removed one (1) person from the list of employees (Dallas Weitzel). LTD also submitted confidential financial statements as part of its attachment in Section IV. Finally, LTD provided the signed application verification in Section V and an affidavit of LTD's CEO, Corey Hauer in Section VI.

5. New Lisbon's Direct Testimony. New Lisbon submitted direct testimony of John E. Greene, New Lisbon's CEO and General Manager. In his testimony Mr. Greene states that New Lisbon is an Indiana corporation and an Indiana incumbent local exchange carrier ("ILEC") as well as a competitive local exchange carrier ("CLEC"). Mr. Greene testified that New Lisbon intervened in this Cause because it provides facilities based local exchange service in areas identified in LTD's application. He stated that New Lisbon questions whether LTD has the financial, managerial and technical ability to provide the communications services for which it seeks a certificate. Mr. Greene testified that LTD has not provided any evidence to demonstrate that it has the managerial ability to provide the services it has committed to provide in Indiana. LTD has represented that it intends to construct and operate a Fiber-to-the-Home ("FTTH") network in Indiana to deliver gigabit service to over 30,000 locations in rural Indiana, but has not given any evidence that it has any experience engineering, designed, constructing, installing and operating a FTTH network that will deliver 1 Gbps service. Mr. Greene stated that operating a fixed wireless internet service provider ("WISP") requires different skills, training, relationships, and experience than operating a fiber network. Mr. Greene explained that in order

to operate WISPS, New Lisbon hired personnel with experience in the WISP industry and has spent several years cross-training employees to be able to work in both the fiber/wireline and fixed wireless sides of New Lisbon's business. On-boarding new employees takes months at a minimum and cross-training employees with a background in the WISP industry to be able to design, engineer, construct, and operate a fiber-based network takes years.

Mr. Greene testified that a company must have relationships with fiber engineering and fiber construction contractors to ensure it can procure the materials and equipment necessary to construct the network. LTD has refused to provide any information about the vendors it will use or relationships it will leverage to accomplish its FTTH deployment project. Based on Mr. Greene's industry experience, he believes it is unlikely that LTD has relationships with qualified contractors in Indiana because LTD has never conducted business in Indiana and has no experience constructing and operating a FTTH network.

Mr. Greene discussed LTD's operating locations. He testified that LTD listed what appears to be a residential address in Las Vegas, Nevada as its company address in its CTA application as well as a "mailing address" of a P.O. Box in Blooming Prairie, Minnesota. Mr. Greene testified that New Lisbon requested a list of the physical address for all real property, office space, warehouse space, or operations space leased or rented by LTD. While LTD initially refused to provide this list, it was compelled to respond by the Commission's April 22, 2021 docket entry. Mr. Green provided Exhibits to show that LTD's operations locations include storage shed, unoccupied and unmarked warehouses, and co-locations shared with other entities. Mr. Greene stated that while LTD operating out of a warehouse and few storage facilities is sufficient for a WISP that requires very little infrastructure, however, a fiber network cannot be operating this way. Reputable providers of fiber-based broadband maintain local business offices to house customer service representatives, interface with customers and the public, house backbone and switching infrastructure, oversee contractors and vendors, and manage fields operations. Mr. Greene testified that LTD's current business model is not sufficient to support these services and has not supported any evidence to show how it will change its business model to be able provide the services it has promised to provide Indiana. Mr. Greene testified that while LTD's sparse and barren nature confirms that it is a classic WISP, it has committed to design, engineer, construct, and operate a fiber to the home network and offer gigabit service to residential customer in Indiana. LTD has not provided any evident to demonstrate that it has the technical capability to construct or operate this proposed fiber network.

Mr. Greene testified that in response to New Lisbon's discovery requests, LTD stated "the expected cost to build the network in Indiana to meet its commitment is greater than the subsidy LTD will receive from the RDOF award." This confirms that LTD will need to use cash, raise funds through equity issuance, or borrow funds to finance the network. However, LTD also stated that it "has no current financial obligations related to providing services in Indiana," which suggests that LTD has not secured any loans yet. Mr. Greene stated that in his experience, conventional lenders typically consider an applicant's credit history, current and projected balance sheet, current and projected cash flow and income, age of the business, current and projected amount of debt, collateral, and the nature of the industry. Mr. Greene testified it would be very difficult for any communications provider to secure long-term loans to finance its network if it could not demonstrate a debt to equity ration (after borrowing) near 50%. Mr.

Greene stated that in his experience, relationships with vendors that supply materials and network equipment take time to develop as vendors need to be sure their customers are credit-worthy and will pay for the goods. Mr. Greene also states that communications service providers undertaking fiber deployment projects typically order fiber months in advance of expected delivery. LTD is not procuring materials and equipment for a major infrastructure project in an efficient way, since they will have to pay in advance for the fiber, materials, supplies, and equipment.

Mr. Greene concluded that LTD provided no information about how it will finance its network construction in Indiana and that it has not identified any loan commitments to support the build. Mr. Greene recommends the Commission should deny LTD's request for a certificate of authority to provide communications service in Indiana because LTD has not provided any evidence to show that it has the financial, technical, and managerial ability to construct the network it has promised to construct, nor provide the services it has committed to provide.

6. LTD Broadband LLC's Rebuttal Testimony. LTD submitted rebuttal testimony by its CEO, Corey Hauer. Mr. Hauer believes that Mr. Greene's objections to LTD's CTA application are motivated by competitive considerations and based purely on speculation, innuendo and the perspective of a subsidized local rural exchange carrier ("RLEC") that does not know about LTD's proven entrepreneurial business model.

Mr. Hauer testified that LTD does not have to demonstrate that it has the financial, managerial, and technical ability to construct the network it has committed to provide because the commission does not evaluate an applicant's ability to construct the network. Mr. Hauer stated that LTD is a privately-held limited liability company formed in Nevada in 2010. Mr. Hauer holds 100% controlling interest. Mr. Hauer testified that LTD currently offers service in Iowa, Kansas, Minnesota, Nebraska, South Dakota and Wisconsin and is continuing rapid expansion averaging 30 new tower sites each month in states including Indiana. Mr. Hauer states that LTD operates an extensive fiber network with geographically dispersed redundant paths to insure maximum reliability and throughput to their tower network. Mr. Hauer described LTD's current customer base as unserved and underserved rural areas and small towns, though LTD is starting to leverage 5G millimeter wave technologies in some larger communities to offer a competitive choice to broadband customers. Mr. Hauer testified that LTD is potentially ahead of schedule of its CAF Phase II buildout and has completed its 5th year obligation of 80% buildout in Iowa and Minnesota by the end of year 1. LTD expects to finish 100% of its CAF Phase II obligation for Illinois, which is also 4 years ahead of schedule. Mr. Hauer stated that LTD is authorized to provide communications services in Iowa, Kansas, Minnesota, Nebraska, South Dakota, Wisconsin and is designated as an ETC in Illinois, Iowa and Minnesota. In addition to Indiana, LTD is currently seeking authorization as an ETC in 11 other jurisdictions where it has been awarded with RDOF funding: California, Colorado, Kansas, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Texas and Wisconsin.

Mr. Hauer testified that LTD is requesting authority to provide the following telecommunications services: interconnected VoIP service, dedicated transport telecommunications services, and facilities based local exchange service. LTD's application also requesting authority to provide information services including internet access service and

broadband service. Mr. Hauer stated that LTD's financial data provided to the Commission and LTD's track record demonstrates that it has the experience and ability to manage its financial resources to provide the communications services for which it seeks certification.

Mr. Hauer stated that together, the key managerial staff of LTD have a combined 67 years of experience in the fields of telecommunications, customer care, and marketing. LTD's customer service, marketing and installation and repair activities are managed by staff that have a combined 32 years of experience. Mr. Hauer testified that LTD's managerial staff is currently supported by approximately 154 full-time employees, which ensures that LTD has the managerial ability to provide the communications services for which it seeks a CTA.

Mr. Hauer testified that LTD has built one of the largest fixed wireless coverage areas in rural areas in the United States in a short amount of time and states that LTD's Indiana network will be overseen by experienced professionals as well. Mr. Hauer states that LTD has partnering with contractors and preparing to hire and train over 500 construction staff including many local workers in Indiana. Mr. Hauer stated that LTD scaled its staffing to meet CAF performance obligations and plans to do the same with respect with RDOF. LTD expects to have boots on the ground in 12 of the 15 states, including Indiana, that comprise of its RDOF area.

In response to Mr. Greene's testimony, Mr. Hauer testifies that he has no business relationship with Mr. Greene and that Mr. Greene has no personal knowledge of LTD's confidential finances, business model or strategy for extending service to Indiana. Mr. Hauer states that unlike LTD, RLECs have little experience with a business model where such subsidies such as USF support do not exist. Mr. Hauer testified that Mr. Greene is attempting to impart the RLEC business model on an entrepreneurial company and that Mr. Greene's testimony is nothing more than unbridled and unsupported speculation by a disappointed, unsuccessful RDOF bidder. Mr. Hauer also notes that New Lisbon did not equip and train its staff to climb and erect towers until it began offering fixe-wireless internet service, which is LTD's plan once its RDOF long form is approved. Mr. Hauer testified that Mr. Greene misunderstands the requirement for an Indiana CTA applicant is to demonstrate the requisite ability to provide the communications service for which authority is requested and not to demonstrate the ability to construct a network. Mr. Hauer believes that Mr. Greene does not appreciate that LTD currently provides service via fiber to customers in other states and is scaling to deploy more fiber going forward. Mr. Hauer testified that has 8 years of experience installing and splicing underground and aerial fiber. Mr. Hauer notes in his testimony that Mr. Greene has no personal knowledge of LTD's existing or potential relationships with contractors and believes that Mr. Greene believes that the State of Indiana should not open its doors to businesses from other states. Mr. Hauer stated that LTD has been meeting with counties in Indiana to pave the way for a smooth deployment of FTTH in their areas. Mr. Hauer assures the Commission that LTD conducts business operations in some form at each of the locations listed in Mr. Greene's Answer #12 and is not relevant for consideration of the Commission for approval of LTD's CTA application. What is relevant, Mr. Hauer states, is that LTD has demonstrated that using its current entrepreneurial business model, LTD is already providing communications service in six states and has the technical, managerial and financial ability to do the same in Indiana.

Mr. Hauer concluded that Mr. Greene has focused on LTD because New Lisbon was an unsuccessful bidder in areas where LTD was successful and that LTD has the financial, technical and managerial abilities required to provide the communications service for which it seeks a CTA. Mr. Hauer stated that the Commission should grant LTD's CTA and reject a disappointed bidder's (New Lisbon) improper attempts to second-guess the FCC's auction rules.

7. Cross Examination of LTD Broadband LLC's Witness.

Upon cross examination, Petitioner's witness Mr. Hauer answered questions relating to Petitioner's Application for CTA, statements in Mr. Hauer's rebuttal testimony, and LTD's responses to several of New Lisbon's data requests. Relevant cross examination testimony is summarized in the Commission Discussion and Findings set forth below.

8. Commission Discussion and Findings.

Pursuant to Ind. Code § 8-1-32.5-6, before a communications service provider ("CSP") may offer communications service to customers in Indiana, the CSP must apply to the commission for a CTA. The statute also prescribes the information that must be submitted to the Commission along with a CSP's application, including, under Ind. Code § 8-1-32.5-6(b)(2), "Information demonstrating the provider's financial, managerial, and technical ability to provide each communications service identified in the provider's application under subsection (a)(5) in each service area identified under subsection (a)(4)."

A hearing is not required in connection with the issuance of a CTA unless a hearing is requested pursuant to Ind. Code § 8-1-32.5-9. If a hearing is properly requested, a hearing shall be conducted to consider:

- (1) Whether the application and documents submitted under Ind. Code § 8-1-32.5-6 are accurate, complete, and properly verified; and
- (2) The communications service provider's financial, managerial, and technical ability to provide the communications service for which it seeks a CTA.

Ind. Code § 8-1-32.5-9(b). In this case, New Lisbon filed a Verified Request for Hearing under Ind. Code § 8-1-32.5-9, and a hearing was conducted on May 19, 2021.

We now consider the issues set forth in Ind. Code § 8-1-32.5-9(b):

(1) Whether the application and documents submitted under Ind. Code § 8-1-32.5-6 are accurate, complete, and properly verified.

In considering this requirement, we first note that LTD suggested in its proposed order that "New Lisbon does not dispute that LTD's Application and supporting documents are accurate, complete, and properly verified." To the contrary, New Lisbon pointed out numerous inaccurate statements by LTD during the May 19, 2021 evidentiary hearing. New Lisbon disputed the accuracy of the estimated date of service deployment identified in LTD's Application and the accuracy of LTD's list of other states in which LTD is authorized to provide service identified in the Application. In addition, New Lisbon pointed out multiple statements in

Mr. Hauer's rebuttal testimony that were directly contradicted by LTD's subsequent discovery responses. Based on our review of the evidence, we conclude that LTD's application and documents submitted in this cause were not accurate.

In Section II(E) of its Application, LTD identified Q3 to Q4 of 2021 as the estimated date of deployment for all communications services identified in the Application. However, the record evidence strongly contradicts this estimated date of deployment.

First, in response to multiple discovery questions, LTD stated that "the dates for commencement of service and construction are uncertain." Further, in rebuttal Mr. Hauer represented to this Commission that "LTD is preparing to hire and train over 500 construction staff including many local workers in Indiana" and "LTD is recruiting seasoned outside plant professionals" (Petitioner's Exhibit 4, page 7, ln. 1-7). However, the Commission finds these statements are unsupported and directly contradicted by LTD's own admissions in discovery, including the following:

- The number of employees LTD will hire [to design the FTTH network LTD has committed to build in Indiana] is unknown at this time. LTD will hire as many employees as are required in conjunction with outsourced design work. Committing to a specific hiring strategy now would be premature. (Exhibit CX3)
- The number of employees LTD will hire [to engineer the FTTH network LTD has committed to build in Indiana] is unknown at this time. Committing to a specific strategy now would be premature. (Exhibit CX4)
- The number of employees LTD will hire [to construct the FTTH network LTD has committed to build in Indiana] is unknown at this time. LTD will hire as many employees as are required in conjunction with outsourced design work. Committing to a specific hiring strategy now would be premature. (Exhibit CX5)
- To the extent new employees [that are hired to design, engineer, or construct the FTTH network LTD has committed to build in Indiana] require training, LTD will provide it. Since the dates for commencement of service and construction are uncertain, the precise training description is unknown at the time. (Exhibit CX6)
- The name of the individual(s) that will train new employees [that are hired to design, engineer, or construct the FTTH network LTD has committed to build in Indiana] is unknown given that the dates for commencement of service and construction are uncertain at this time. (Exhibit CX7)
- LTD admits that it has not posted any opening or jobs in Indiana because to do so would be premature given that the dates for commencement of service and construction are uncertain at this time. (Exhibit CX8)
- Recruiting activity dates [for date or project milestone on which LTD plans to begin recruiting employees or post job openings in Indiana] will be dictated by when the FCC is ready to fund RDOF construction. (Exhibit CX9)
- LTD has not determined all possible recruiting methods [to hire employees to design, engineer, and construct the FTTH network LTD has committed to build in Indiana] because to do so would be premature given that the dates for commencement are uncertain at this time, but recruiters and online recruitment services will likely be among the methods to be used. (Exhibit CX10)

- The content of every job posting [that LTD has posted or intends to post for positions that will be physically located in Indiana] is unknown at this time because the creation of job posting would be premature given that the dates for commencement of service and construction are uncertain at this time. (Exhibit CX11)
- The content of every job posting [that LTD has posting or intends to post for positions that will support the design, engineering construction, or operation of the fiber communications network LTD plans to construct and operated in Indiana but will not be physically located in Indiana] is unknown at this time because the creation of job posting would be premature given that the dates for commencement of service and construction are uncertain at this time. (Exhibit CX12)
- The content of the referenced job descriptions [that LTD will use for employees hired to design, engineer, construct the FTTH network LTD has committed to build in Indiana] is unknown at this time because the creation of job descriptions would be premature given that the dates for commencement of service and construction are uncertain at this time. Job descriptions will be developed once LTD has more timing certainty from the FCC. (Exhibit CX13, Exhibit CX14, Exhibit CX15)
- The number of office locations LTD will open in Indiana is unknown at this time. (Exhibit CX16)

Based on the record evidence, it is clear that LTD has not taken *any* steps to recruit, hire, or train *any* employees to design, engineer or construct the network LTD has committed to build in Indiana, nor has LTD commenced planning efforts to deploy service in Indiana. In fact, LTD admitted in discovery that “the dates for commencement of service and construction are uncertain at this time.” We conclude that LTD is not positioned to commence service by Q3 or Q4 of 2021, and LTD provided inaccurate information in Section II(E) of its Application.

Furthermore, in Section II(I) of its Application, LTD identified Minnesota, Iowa, and Illinois as other states in which LTD is authorized to provide communications services. However, LTD’s own testimony contradicts this. Mr. Hauer testified in rebuttal that “LTD is authorized to provide communications service in Iowa, Kansas, Minnesota, Nebraska, South Dakota and Wisconsin.” (Petitioner’s Exhibit 4, page 4, ln. 17-18) Based on the record evidence, we conclude that LTD provided inaccurate information in Section II(E) of its Application.

Finally, we are deeply concerned with the number of statements made in Mr. Hauer’s rebuttal testimony that directly contract LTD’s discovery responses. In addition to the contradictory statements set forth in detail above, we note the following:

- In rebuttal testimony, Mr. Hauer stated: “We are continuing rapid expansion of our footprint averaging 30 new tower sites each month in states *including Indiana*.” (Petitioner’s Exhibit 4, page 3, ln. 12-13) Under cross examination, Mr. Hauer admitted that LTD does not have any tower sites in Indiana.
- In rebuttal, Mr. Hauer stated: “LTD has been meeting with counties in Indiana to pave the way for smooth deployment of FTTH in their areas.” (Petitioner’s Exhibit 4, page 12, ln. 10-13) Under cross examination, when presented with a contradictory discovery response, Mr. Hauer admitted that LTD has in fact only met with one county in Indiana,

and that he did not know whether LTD actually met with that county or whether it was merely a phone call or email.

- In rebuttal, Mr. Hauer stated: “LTD has engaged with outside engineering *and construction* companies”. (Petitioner’s Exhibit 4, page 7, ln. 3-4) Under cross examination, when presented with a contradictory discovery response, Mr. Hauer admitted that [REDACTED].

Even assuming these inaccurate statements in Petitioner’s Exhibit 4 were unintentional, we find LTD demonstrated a concerning lack of regard for accuracy in this proceeding. While the Commission does not consider inaccuracies in a CTA Application to be automatically fatal to a provider’s request for a CTA, these inaccuracies, in combination with other evidence in the record, contribute strongly to the Commission’s conclusion that LTD lacks the financial, managerial, and technical ability to provide each communications service identified in its Application.

(2) LTD’s financial, managerial, and technical ability to provide the communications service for which it seeks a CTA.

An applicant seeking a CTA must provide “Information demonstrating the provider’s financial, managerial, and technical ability to provide each communications service identified in the provider’s application under subsection (a)(5) in each service area identified under subsection (a)(4).” Ind. Code § 8-1-32.5-6(b)(2).

Throughout this proceeding, LTD has repeatedly sought to minimize the statutory requirement to demonstrate that it has the financial, managerial, and technical ability to provide the communications services LTD has committed to provide in the service areas in which it has committed to provide service, which includes more than 31,000 locations in Indiana at an estimated cost of [REDACTED] (Exhibit CX20C). In its proposed order, LTD focused solely on Section 9 of Ind. Code ch. 8-1-32.5 (the “CTA Statute”) and conveniently ignored Section 6. LTD asks that we ignore all of the evidence in the record as to its plans and commitments in Indiana and focus our review on the narrow question of whether LTD has the financial, managerial, and technical ability to provide communications service to a single customer at a single location in Indiana. LTD effectively asserts that as long as LTD has the financial, managerial, and technical ability to mount a single fixed wireless receiver on a tower or a grain bin and provide below baseline service to one customer in Indiana, it has provided the requisite information and should be granted a CTA. We disagree. We do not evaluate an applicant’s information in a vacuum. Rather, we consider all of the evidence before us, including the applicant’s stated plans and commitments in Indiana. The CTA Statute requires an applicant to show that it can provide service not just in theory but in all locations in which it seeks to provide service.

The evidence shows that LTD was awarded approximately \$54 million in RDOF funding in Indiana and that LTD has committed to providing service via FTTH to more than 31,000 locations in Indiana at an estimated cost of [REDACTED] (Exhibit CX20C). In discovery, LTD stated “The locations LTD will serve in Indiana will be determined by the Federal

Communications Commission and not LTD. The locations have been determined by the FCC. The FCC has provided guidance on what is an eligible location and what is not in the Public Notice found here: <https://docs.fcc.gov/public/attachments/DA-16-1363A1.pdf>.” (New Lisbon Exhibit 1, Attachment JEG-3, Cross Exam Exhibit 1). LTD referenced its RDOF obligations throughout its pre-filed rebuttal testimony. (Petitioner’s Exhibit 4 at page 3, ln. 18-20; page 4, ln. 17-23; page 5, ln. 13-21; page 7, ln. 8-15; page 7, ln. 19 – 23; page 8, ln. 1-4; page 10, ln. 16-17; page 14, ln. 15-20).

The record evidence confirms that LTD is before this Commission requesting a CTA in large part (if not solely) because it has been awarded RDOF funding and has committed to serve more than 31,000 locations in Indiana. **The evidence in this Cause confirms that LTD currently has no facilities in Indiana. LTD confirmed that LTD will not resell services. (Exhibit CX1) If LTD cannot and does not successfully design, engineer, and construct facilities, LTD will not be able to provide the services it has identified in its CTA Application in the Indiana locations it has committed to serve. When an entity has no current facilities, the entity’s inability or failure to construct facilities is equivalent to an inability to provide service.** As a result, we will evaluate whether LTD has demonstrated its financial, managerial, and technical ability to provide the communications services LTD has committed to provide in the service areas in which it has committed to provide service, which includes more than 31,000 locations in Indiana.

i. Financial Ability

The Commission has historically reviewed a variety of evidence, in addition to financial statements, presented by CTA applicants to evaluate whether they possess the financial ability to provide the services for which they are requesting Commission authorization.¹ **Consistent with past precedent, we will review and consider all of the evidence relating to LTD’s financial ability to meet its service obligations presented in this cause.**

As part of its Application, LTD provided confidential financial statements [REDACTED]

[REDACTED]. The financial statements show that [REDACTED]. The financial statements show that [REDACTED].

The record shows that LTD secured approximately \$54 million in RDOF funding to deploy FTTH service to more than 31,000 locations in Indiana, and LTD’s expected cost to meet

¹ See, e.g., *In re: Equicom Communications Inc.*, 1989 Ind. PUC LEXIS 262 (IURC July 12, 1989) (in which the Commission reviewed the applicant’s assets, liabilities, pro-forma income statement, line of credit and business affiliations); *In re: Kentucky Data Link, Inc.*, 2002 Ind. PUC LEXIS 237 (IURC July 17, 2002) (in which the Commission reviewed the applicant’s parent company financial backing as it related to the costs of construction and operation of the applicant’s network); *In re: American Consultants Alliance, Inc.*, 2002 Ind. PUC LEXIS 274 (IURC Aug. 7, 2002) (in which the Commission reviewed the applicant’s confidential financial data showing adequate assets for its planned enterprise); *In re: Broadslate Networks of Indiana, Inc.*, 2000 Ind. PUC LEXIS 161 (IURC July 19, 2000) (in which the Commission reviewed financial statements of applicant and its parent company); and *In re: Microwave Telecommunications Incorporated*, 1991 Ind. PUC LEXIS 326 (IURC Aug. 21, 1991) (in which the Commission reviewed the applicant’s balance sheet, facilities purchase agreement, and operating and maintenance expenses to provide the requested services).

LTD's RDOF commitments in Indiana is [REDACTED] (Exhibit CX20C). Furthermore, LTD estimates the cost to deploy service to all locations in all states for which it secured RDOF funding is [REDACTED] (Exhibit CX21C). Based on LTD's own cost estimates, it has committed to build a network in Indiana that is [REDACTED] LTD's current *total* net Property, Plant, and Equipment. At the same time, LTD has committed to build infrastructure across multiple states that is approximately [REDACTED] LTD's current total net Property, Plant, and Equipment.

Based on LTD's cost estimate for its Indiana network and its RDOF funding, LTD will need to contribute more than [REDACTED] to finance its network in Indiana alone. [REDACTED]

[REDACTED] However, LTD stated it "has no current financial obligations related to providing services in Indiana." (See New Lisbon Exhibit 1, Attachment JEG-5).

In rebuttal, Mr. Hauer testified "Just as it did when managing its financial needs to meet its CAF Phase II obligations, LTD has taken prudent steps to identify and meet any future financing needs to align with the FCC's approvals so that LTD is positioned to comply with the applicable RDOF buildout milestones." (Petitioner's Exhibit 4 at page 14, ln. 15-20). However, LTD's statement is vague and unsupported. We find that LTD's unsupported and unproven statement that "it has taken prudent steps" is outweighed by the reality of LTD's financial statements and the fact that LTD has no current financial obligations related to providing services in Indiana. It is also outweighed by the evidence showing that LTD has not accurately estimated the cost to deploy service to 31,000 locations in Indiana via FTTH. Mr. Hauer admitted under redirect exam that the cost estimate set forth in Exhibit CX20C was prepared *after* LTD was ordered to respond to New Lisbon's discovery request. In addition, the cost estimate is [REDACTED]

[REDACTED]. Based on our review of the evidence, we conclude that LTD does not know the expected cost to deploy service in Indiana to any reasonable degree of certainty, and we cannot find LTD's unsupported statements that it has "taken prudent steps to meet future financing needs" credible or feasible.

Furthermore, evidence such as LTD's bare "operations" locations in other states and its meager take rate of approximately 1.2% nationwide (confirmed by Mr. Hauer under cross examination) show that LTD's business model is to maintain the barest minimum presence possible in the areas in which it provides fixed wireless service. Neither LTD's financial statements nor the record evidence support LTD's argument that it has the financial ability to deploy service via fiber to more than 31,000 locations in Indiana *at an estimated cost of* [REDACTED] (Exhibit CX20C). Finally, as discussed in section 8(1) *infra*, there is no evidence to demonstrate that LTD has the financial ability to meet its estimated date of deployment of Q3 to Q4 of 2021. As such, we find that LTD has not demonstrated that it has the financial ability to provide each communications service identified in LTD's application under subsection (a)(5) in each service area identified under subsection (a)(4).

ii. Managerial Ability

As part of its Application, LTD provided Petitioner's Exhibit 3, the Corrected Attachment 2 to CTA Application, which provides a biography for LTD's CEO and a few sentences about six of LTD's staff members. The biographies of LTD's "Key" staff demonstrate that members of LTD's staff have a background in the fixed wireless industry, but the majority of the "Key" staff members have no experience engineering, designing, constructing, installing and operating a fiber network.

New Lisbon presented evidence that operating a fixed wireless internet service provider ("WISP") requires different skills, training, relationships, and experience than operating a fiber network. The evidence demonstrates it takes time to develop expertise to construct and operate a fiber network. The evidence demonstrates that certain actions are necessary when a company undertakes a different business endeavor, including hiring personnel with experience in the industry and training existing employees. The evidence shows that on-boarding new employees takes months at a minimum and cross-training employees with a background in the WISP industry to be able to design, engineer, construct, and operate a fiber-based network takes years.

In rebuttal, Mr. Hauer stated that "LTD is preparing to hire and train over 500 construction staff including many local workers in Indiana" and "LTD is recruiting seasoned outside plant professionals" (Petitioner's Exhibit 4, page 7, ln. 1-7). However, as discussed in Section 8(1) *infra*, the Commission finds these statements are unsupported and directly contradicted by LTD's own admissions in discovery. In fact, we find that LTD has not taken any steps to recruit, hire, or train any employees to design, engineer or construct the network LTD has committed to build in Indiana, nor has LTD commenced planning efforts to deploy service in Indiana.

The evidence shows that constructing and operating a large fiber project is a major undertaking even for a company with deep experience in completing such projects. The evidence demonstrates it would be difficult to undertake a large fiber construction project if a company does not have relationships with vendors to ensure it can procure the materials and equipment necessary to construct the network. In rebuttal, Mr. Hauer represented to the Commission that "LTD has engaged with outside engineering and construction companies and is positioning resources to begin construction." (Petitioner's Exhibit 4, page 7, ln. 3-5) However, Mr. Hauer's testimony under cross examination directly contradicts this testimony. In fact, Mr. Hauer admitted that [REDACTED].

The evidence shows that LTD does not currently possess the managerial ability to deploy service via fiber to more than 31,000 locations in Indiana. Further, the evidence shows that to date, LTD has taken no steps to develop the required managerial ability. Based on the evidence in the record, we are skeptical that LTD can flip a switch and suddenly acquire the managerial capability to deploy and operate a fiber network. Finally, as discussed in section 8(1) *infra*, there is no evidence to demonstrate that LTD has the financial ability to meet its estimated date of deployment of Q3 to Q4 of 2021. As such, we find that LTD has not demonstrated that it has the

managerial ability to provide each communications service identified in LTD's application under subsection (a)(5) in each service area identified under subsection (a)(4).

iii. Technical Ability

Based on the record evidence, we find that LTD has failed to provide information demonstrating the technical ability to deploy service via fiber to more than 31,000 locations in Indiana.

First, LTD could not identify (or even estimate) the number of office locations LTD will open in Indiana (Exhibit CX16), and LTD's current physical locations consist of mini storage sheds, sparsely occupied warehouses, and other co-located spaces that do not appear to support any substantial operations, as evidenced by Google Map photos of the location addresses provided by LTD during discovery. (New Lisbon Exhibit 1, Attachment JEG-1) In rebuttal, Mr. Hauer speculated that some Google Map photos are dated and inaccurate. (Petitioner's Exhibit 4, page 13, ln. 5), but LTD failed to provide any actual evidence to demonstrate that the photographs and information, including Google Map photos, submitted by New Lisbon showing the condition of the properties were inaccurate. We can only conclude that the information provided by New Lisbon is accurate and that LTD currently operates out of storage facilities and unmarked warehouses.

The evidence shows that constructing and operating a fiber based broadband network requires actual physical operations locations to store the materials needed both for the large construction phase and for ongoing operations. The evidence shows that reputable providers of fiber-based broadband maintain local business offices to house customer service representatives, interface with customers and the public, house backbone and switching infrastructure, oversee contractors and vendors, and manage field operations. Based on the evidence, we find that LTD's current business model is not sufficient to support the services LTD has promised to provide in Indiana, and LTD has not provided any evidence to show how it will change its business model to be able to build the network and provide communications services it has committed to provide in Indiana.

Second, LTD failed to demonstrate that it has expertise and experience designing, engineering, or constructing a fiber network, which LTD has committed to build and operate in Indiana. Although LTD stressed its progress toward meeting its FCC CAF Phase II auction obligations, the evidence shows that LTD's CAF obligations (LTD was awarded a total of \$1,193,419 in support to provide baseline low latency service to approximately 1,000 locations) are not comparable to its obligation to provide service via fiber to more than 31,000 locations in Indiana at an estimated cost of [REDACTED] (Exhibit CX20C). Importantly, the evidence shows that LTD is only providing service via fiber to [REDACTED]. (Exhibit CX19C) Most important, the evidence reveals that *none* of LTD's current employees spend more than 1/3 of their regular work hours designing, engineering, or constructing a FTTH communications network. (Exhibit CX2)

Based on the foregoing, we find that LTD's current business model, experience, and service offerings are not sufficient to demonstrate LTD's technical ability to deploy service via

fiber to more than 31,000 locations in Indiana at an estimated cost of [REDACTED] (Exhibit CX20C). We find that LTD's unsupported and unproven statements that it *plans* to develop technical ability are outweighed by the substantial evidence in the record showing that LTD faces substantial challenges in developing that technical ability and LTD has not taken any concrete steps to develop it. As such, we find that LTD has not demonstrated that it has the technical ability to provide each communications service identified in LTD's application under subsection (a)(5) in each service area identified under subsection (a)(4).

iv. Conclusion

In this proceeding, LTD argued "the best evidence" of LTD's financial, managerial, and technical ability to provide the communications services for which it seeks a CTA "is LTD's rapid expansion and its success in meeting its obligations under the FCC's CAF II auction". At the same time, LTD argued the Commission should not consider whether LTD has the ability to "construct a network" and the Commission should ignore evidence submitted in this Cause regarding LTD's RDOF obligations to design, engineer, and construct a fiber network to serve 31,000 locations in Indiana. First, LTD's argument is contradictory. If LTD's ability meet its CAF II obligations (which are not specific to Indiana) is relevant to the Commission's review in this Cause, we conclude that evidence showing that LTD does not have the ability to meet its RDOF obligations (which are specific to Indiana) is relevant. Second, LTD's legal position is inconsistent with the CTA Statute, as discussed above in Section I *infra*. Section 6 of the CTA Statute requires an applicant to show that it can provide service not just in theory but in all locations in which it seeks to provide service, and the evidence shows that LTD has committed to providing service via FTTH to more than 31,000 locations in Indiana at an estimated cost of [REDACTED] (Exhibit CX20C).

We disagree that LTD's progress toward meeting CAF II obligations "demonstrates that it has the requisite financial, managerial, and technical capability" necessary for the Commission to grant a CTA in this Cause. LTD's CAF II obligations are not comparable to the obligations LTD has undertaken in Indiana. Mr. Hauer confirmed on cross examination that LTD was awarded a total of \$1,193,419 in CAF II support to provide baseline (25 Mbps/3 Mbps) low latency service to approximately 1,000 locations across several states. The evidence shows that LTD is not deploying fiber service to meet its CAF II obligations and that [REDACTED]. (Exhibit CX19C). We conclude that evidence of LTD's progress in deploying baseline low latency fixed wireless service to 1,000 locations is not sufficient, on its own, to demonstrate that LTD has the financial, managerial, and technical ability to construct a network and provide service via FTTH to more than 31,000 locations in Indiana at an estimated cost of [REDACTED] (Exhibit CX20C).

Based on our review of the record, we find no credible evidence that LTD has expertise or experience designing, engineering, constructing or operating a fiber network, and there is no credible evidence that LTD has taken any steps to develop or acquire that expertise. (See Exhibits CX2 - CX15 and Mr. Hauer's admission under cross examination that [REDACTED]. By [REDACTED] its own admission, LTD has relied on evidence about its performance as a fixed wireless internet service provider to satisfy its statutory requirements in this Cause, but we conclude the weight of

the evidence shows that LTD's current business model, experience, and service offerings are not sufficient to demonstrate LTD's technical ability to deploy service via FTTH to more than 31,000 locations in Indiana at an estimated cost of [REDACTED] (Exhibit CX20C).

For the foregoing reasons, we conclude that LTD's CTA Application (including attachments) failed to demonstrate that it has the financial, managerial, and technical ability to provide each communications service identified in its Application. Furthermore, when given the chance to supplement the record through rebuttal testimony, LTD offered vague and unsupported statements that did not add any credible evidence to satisfy this standard. We conclude LTD has not demonstrated (through its Application or other evidence submitted in this Cause) that it has financial, managerial, and technical ability to provide each communications service identified in its Application.

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

1. LTD Broadband LLC's Application for a Certificate of Territorial Authority as a Communications Service Provider is hereby denied.
2. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:

APPROVED:

Dana Kosco
Secretary of the Commission

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