

ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	✓		
Freeman	✓		
Krevda			✓
Ober	✓		
Ziegner			✓

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**APPLICATION OF LTD BROADBAND, LLC)
FOR DESIGNATION AS AN ELIGIBLE) CAUSE NO. 41052 ETC 96
TELECOMMUNICATIONS CARRIER FOR)
THE PURPOSE OF PROVIDING SERVICES) APPROVED: JUN 02 2021
SUPPORTED BY THE FCC'S RURAL)
DIGITAL OPPORTUNITY FUND.)**

ORDER OF THE COMMISSION

Presiding Officers:

James F. Huston, Chairman

Loraine L. Seyfried, Chief 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 (“Petition”) with the Indiana Utility Regulatory Commission (“Commission”). Petitioner seeks designation as an eligible telecommunications carrier (“ETC”) within certain census blocks in Indiana pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (“Act”), to receive federal Rural Digital Opportunity Fund (“RDOF”) support to offer high-speed broadband and voice services to unserved rural areas within Indiana. Petitioner also requests designation as a Lifeline provider pursuant to 47 C.F.R. § 54.101(d), which mandates that ETCs, including those designated to receive high-cost support, offer Lifeline service in their designated service areas.

On March 19, 2021, LTD filed the direct testimony and exhibits of Corey Hauer, LTD’s Chief Executive Officer (“CEO”).

On March 30, 2021, the Indiana Exchange Carrier Association, Inc. d/b/a Indiana Rural Broadband Association (“INRBA”) filed a petition to intervene in this Cause, which was objected to by LTD. On March 31, 2021, INRBA filed the direct testimony and exhibits of John E. Greene, an INRBA board member and the CEO and general manager of New Lisbon Telephone Company. The Presiding Officers granted INRBA’s petition to intervene over LTD’s objections in an April 8, 2021 Docket Entry, which also deemed INRBA’s testimony filed as of the date of the Docket Entry and extended LTD’s deadline to file rebuttal testimony.

On March 31, 2021, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed a notice of intent not to file testimony and a request for administrative notice of two FCC documents, the latter of which was subsequently withdrawn on April 22, 2021.

On April 16, 2021, LTD filed the rebuttal testimony and exhibits of Mr. Hauer, and on April 20, 2021, LTD filed its responses to an April 14, 2021 Docket Entry requesting additional information regarding the Petition.

On April 28, 2021, INRBA filed a motion to compel discovery and a motion to continue the evidentiary hearing in this Cause, which the Presiding Officers, in an April 29, 2021 Docket Entry, granted in part and denied in part INRBA's motion to compel and denied INRBA's motion to continue the evidentiary hearing.

The Commission noticed this matter for an Evidentiary Hearing to be held at 9:30 a.m. on May 3, 2021, in Room 224, 101 West Washington Street, Indianapolis, Indiana. Due to the ongoing COVID-19 pandemic and agreement of the parties, the hearing a Docket Entry was issued on April 28, 2021, advising that the hearing would be conducted via WebEx and providing related participation information. Petitioner, the OUCC, and INRBA, by counsel, participated in the hearing via video WebEx.

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 and 47 C.F.R. §§ 54.201 and 54.202, the Commission is authorized to designate ETCs, thereby enabling those so designated to receive federal universal service fund ("USF") support under 47 U.S.C. § 254, and in accordance with the Commission's Orders in Cause Nos. 40785, 41052, and 42067. The Commission also has jurisdiction over communication service providers ("CSPs") pursuant to Indiana Code § 8-1-2.6-13. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. **Petitioner's Characteristics.** LTD is a privately held limited liability company formed in the State of Nevada and authorized to conduct business in Indiana. LTD's principal business address is 69 Teahouse Street, Las Vegas, NV 89138. LTD offers broadband services to approximately 16,000 customers in Iowa, Kansas, Minnesota, Nebraska, South Dakota, and Wisconsin. On March 15, 2021, LTD filed an Application for a Certificate of Territorial Authority ("CTA") for CSPs with the Commission in Cause No. 45519.

3. **Rural Digital Opportunity Fund.** The Federal Communications Commission ("FCC") established the RDOF to provide \$20.4 billion in support through a reverse auction ("RDOF Auction") designed to bring broadband service to areas that lack access to both fixed voice and 25/3 Mbps broadband services.¹ The FCC awards RDOF support through a competitive bidding process to qualified applicants who commit to deploy and maintain voice and broadband service of at least 25/3 Mbps in the identified high cost areas.² The FCC adopted a two-stage application process.³ The pre-auction short form application requires a potential bidder to establish its eligibility to participate in the RDOF Auction by providing basic ownership information and certifying its qualifications. After the RDOF Auction, winning bidders are required to file a long form application demonstrating they are legally, technically, and financially qualified to receive support.

On December 7, 2020, the FCC issued a Public Notice announcing LTD as an RDOF

¹ *Rural Digital Opportunity Fund*, Report and Order, 35 F.C.C. Rcd 686 (February 7, 2020) ("RDOF Order").

² *Id.* at ¶ 4.

³ *Id.* at ¶ 68.

Auction winner for more than \$1.3 billion in funding over ten years to serve 528,088 locations in 15 states, including \$54,456,917.90 for deployment to 5,458 census blocks in Indiana covering 31,330 locations.⁴ These census blocks comprise LTD's requested ETC service area. The FCC requires RDOF Auction winning bidders to commercially offer the supported services meeting the relevant service requirements to all awarded locations within prescribed timeframes. However, to receive funding, each successful bidder must demonstrate to the FCC that it has been designated as an ETC in its awarded RDOF census blocks by June 7, 2021.

4. Summary of the Evidence.

A. LTD's Direct Evidence. Mr. Hauer testified LTD requests designation as an ETC in the proposed service area for purposes of receiving support from the USF and the recently completed RDOF Auction to deploy broadband and voice communications. He testified LTD understands that federal high-cost ETCs are also required to participate in the federal low-income ("Lifeline") program and offer qualifying Lifeline service plans to eligible consumers. Therefore, LTD also seeks designation as an ETC to operate, and receive funding from, both the RDOF and Lifeline USF programs.

Mr. Hauer testified that he formed LTD in 2010 and holds a 100% controlling interest in the company. He stated that since 2011, LTD has grown from a single location in Minnesota to a network of over 2,150 broadcast sites covering 50,000 square miles and servicing 16,000 customers in Iowa, Kansas, Minnesota, Nebraska, South Dakota, and Wisconsin. Additionally, he stated LTD's continued expansion averages 30 new broadcast sites each month, and LTD is also overbuilding much of its existing fixed wireless footprint with 5G millimeter wave fixed wireless equipment to enable gigabit speeds. Mr. Hauer testified LTD intends to deploy fiber to the home ("FTTH") in the last mile using gigabit passive optical networks and 10-gigabit passive optical networks to offer up to 10 Gbps speeds in the designated ETC service area. He also noted that middle mile connections may utilize multi-gigabit fixed-wireless in certain instances.

Mr. Hauer testified that LTD is currently designated as an ETC in Illinois, Iowa, and Minnesota, and that, in addition to Indiana, it is seeking ETC designation in 11 other jurisdictions where it was awarded RDOF funding, including California, Colorado, Kansas, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Texas, and Wisconsin. He noted LTD does not currently provide any services in Indiana and has a pending application for a CTA to operate as a CSP.

Mr. Hauer testified that the FCC established the RDOF as a continuation of its efforts through the Connect America Fund to accelerate deployment of high-speed fixed broadband service to unserved and underserved Americans in rural areas. He testified that in the RDOF Auction, the FCC awarded LTD over \$132 million in funding over 10 years to serve a total of

⁴ *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 (Dec. 7, 2020) ("*Auction 904 Results Notice*").

528,088 locations in 15 states, which included over \$5 million over 10 years to serve 31,330 locations in 756 census blocks in Indiana.⁵

Mr. Hauer testified that LTD has the financial and technical capacity to provide the Lifeline supported services, noting LTD has been a successfully providing ETC telecommunications and Internet service in three states for one year. He testified LTD holds common carrier wireless licenses from the FCC and will provide service pursuant to its ETC designation on a common carrier basis. Additionally, he stated LTD will provide services, as defined by federal USF program rules, using a combination of its own facilities and network assets owned by third parties.

Mr. Hauer testified that consistent with federal USF program requirements, LTD commits to provide: (1) voice-grade access to the public switched telephone network (“PSTN”) or its functional equivalent; (2) minutes of use for local service provided at no additional charge to end users; (3) access to emergency services; and (4) toll-limitation services to qualifying low-income consumers.

Regarding voice-grade access to the PSTN, Mr. Hauer testified that LTD will provide interconnected voice over Internet Protocol (“VoIP”) service throughout its designated service area. He also provided a summary of LTD’s current service offerings, noting that LTD expects to offer a similar selection of plans with improved upper-end download speeds in Indiana.

Regarding minutes for local service, Mr. Hauer testified that LTD will meet the local usage requirement by offering unlimited local calling in its rate plans and will comply with any minimum local usage requirements adopted in the future by the FCC or the Commission.

Regarding access to emergency services, Mr. Hauer testified that LTD complies fully with the FCC’s requirements for 911/E911 service provided in connection with its VoIP services. He stated LTD confirms each subscriber’s correct physical address (or Registered Location) when service is installed and notifies each subscriber of the need to promptly update the Registered Location if the subscriber changes locations. He testified LTD will provide VoIP customers with 911/E911 access through an arrangement with Inteliquent, a certified telecommunications carrier in Indiana. He said emergency calls from LTD customers will be connected to Inteliquent’s network via high-speed Session Interface Protocol (“SIP”) trunks, which are configured for High Availability IP to ensure maximum call processing effectiveness, at LTD’s datacenters.

Regarding toll-limitation services, Mr. Hauer testified that LTD’s service plans do not distinguish between local exchange and long-distance calls and, therefore, do not apply any additional charge for interexchange calls. He indicated the FCC has affirmed that toll-limitation service need not be offered where a company’s service plans do not include the potential for toll charges. Mr. Hauer further testified that should LTD offer a service plan that does distinguish between toll and non-toll calls in the future, it will offer toll-limitation service to qualifying low-income customers at no additional charge.

⁵ As indicated further below in this Order, Mr. Hauer clarified the funding is for over \$5 million annually over 10 years.

Mr. Hauer testified that LTD will offer standalone VoIP service in its designated ETC service area for \$24.95/month and that Lifeline eligible consumers will be able to apply their Lifeline discount to any residential plan that meets the FCC's then-current minimum service standards. He stated LTD also intends to offer 100 Mbps service for \$100/month and gigabit service for \$150/month. Mr. Hauer noted LTD's Petition included an attachment with the Indiana service offering descriptions and associated pricing.

Mr. Hauer testified LTD will offer supported services using its own facilities or a combination of its own facilities and resale of another carrier's services. He stated LTD currently provides service using a combination of network facilities and technologies with last-mile voice and broadband services provided using fiber and fixed wireless microwave platforms. For its transport backbone, Mr. Hauer stated LTD relies on point-to-point licensed wireless connections, owned fiber, leased dark fiber, and Ethernet. He stated LTD will deploy similar network arrangements in Indiana to provide supported voice services and meet broadband requirements for RDOF support.

Mr. Hauer testified LTD will advertise the availability of supported services throughout its designated service areas using direct mail. He confirmed LTD agrees to comply with all form and content requirements for advertising adopted by the FCC or the Commission and required of all similarly designated ETCs. In addition, he stated that LTD commits to direct advertising to Lifeline-eligible customers, and that such advertising will comply with FCC content requirements. He noted LTD attached a working sample draft of its advertising to its Petition, which Mr. Hauer corrected during the evidentiary hearing to clarify that the Lifeline discount will be offered for digital phone service and not broadband internet service.

Mr. Hauer testified that LTD does not maintain any administrative or customer service offices in Indiana, but that customers can contact the company via a toll-free number from any phone or by dialing 611 from their home phone. He stated that customers can also contact a customer service representative by email or U.S. mail. He testified that all marketing and enrollment services will be conducted by LTD employees. He further testified that LTD does not conduct on-the-road enrollment events and that LTD's advertising will be focused on all potential customers, not only Lifeline customers. However, he stated, LTD will include information about available Lifeline discounts as required in the context of retail service generally available to all consumers in the service area.

Mr. Hauer testified that LTD considers service quality and compliance with consumer protection standards to be integral to its operations and has consistently prioritized customer service and satisfaction. He confirmed that upon designation as an ETC 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 standard and network performance disclosure requirements.

Mr. Hauer testified that customers will have access to INTRAC services for speech and hearing-impaired individuals as required by Ind. Code ch. 8-1-2.8. He also testified that LTD's network is designed to remain operational in emergency situations and to ensure uninterrupted service to customers. Specifically, he noted the network uses state-of-the-art industry standard

equipment and software and is designed to provide for continued services even if one or more elements of the network temporarily fail. Mr. Hauer testified LTD employs a distributed data center model with duplication and load sharing as well as uninterrupted power supply (“UPS”) and generator backups. Also, all point-of-presence locations will have failover power ability, wireless re-route backhaul ability, and multiple routing options. Mr. Hauer explained each data center has multiple network-to-network interfaces with Tier 1 Internet Service Providers and public Internet exchanges supporting full border gateway protocol routing to each transit carrier to ensure uninterrupted uptime for subscribers. In addition, each subscriber is provided with a UPS to provide backup power for up to 24 hours in the event of power outages.

Regarding Lifeline program services, Mr. Hauer stated LTD plans to commence construction in Indiana within three months of the FCC issuing its ready-to-fund notice for the RDOF award. He testified LTD will certify and verify consumer eligibility to participate in the program in accordance with FCC rules. In addition, LTD will require every Lifeline customer to verify on an annual basis that he or she is the head of the household, receives Lifeline-supported services only from LTD, and that no one else in the household is receiving a Lifeline-supported service. Mr. Hauer explained LTD will also require customers to notify it if they no longer participate in the qualifying program, and LTD will verify continued eligibility annually in accordance with state-specific procedures. He also stated LTD will de-enroll Lifeline customers that have not used the Lifeline service for 60 consecutive days.

Mr. Hauer testified that LTD will collect and remit any E911 fees required by Indiana law and will contribute to federal and state USFs as required by law. He noted that the FCC has approved RDOF funding and determined that any impact on the USF by virtue of the RDOF funding is acceptable. Therefore, he concluded, designation of LTD as a Lifeline ETC will not unduly burden the USF or otherwise reduce the amount of funding available to other ETCs.

Mr. Hauer testified that designation of LTD as an ETC in Indiana will serve the public interest by facilitating the goal of deploying voice and high-speed broadband networks in unserved and underserved rural, high-cost areas. He stated that expedited designation of LTD will ensure it is eligible to receive federal high-cost USF support and deploy critical communications facilities as soon as possible, which will provide important connectivity to consumers, businesses, and community anchor institutions, including rural schools, libraries, and medical facilities.

Mr. Hauer confirmed LTD will comply with all rules and regulations that the Commission may lawfully impose on the provision of service contemplated by the ETC Petition, including annual reporting obligations that the Commission has imposed on other similarly situated ETC designees, submission of annual Lifeline Verification survey results, and filing of quarterly reports detailing the number of Lifeline customers enrolled each month, the number of deactivated Lifeline customers each month, and the reasons for the deactivation. He also committed to providing reports, if required, concerning the number of complaints per 1,000 lines and the number of requests for service from potential customers in its designated service areas that were unfulfilled during the prior year, including detail of the company’s attempt to provide service to each potential customer.

B. INRBA’s Direct Evidence. Mr. Greene testified that INRBA is an Indiana not-for-profit corporation comprising 33 local and small commercial telecom broadband

companies dedicated to promoting state-of-the-art communications facilities and services throughout rural Indiana. He stated that INRBA opposes the relief requested by LTD because INRBA believes that LTD does not meet the requirements for ETC designation and is not capable of providing the quality of service for which it has been provisionally awarded RDOF funds. He explained that INRBA's members, which service predominately rural areas, have a strong interest in ensuring USF support goes to recipients who will deliver the promised networks, infrastructure, and service to rural Hoosiers.

Mr. Greene testified that, contrary to Mr. Hauer's direct testimony, the FCC awarded LTD a total of \$54,456,917.90 in RDOF funding over a 10-year period. He noted that Mr. Hauer's testimony indicated that LTD was awarded a total of only \$5,445,691.79 over a 10-year period, but that this is the amount LTD will receive annually over the 10-year period and is only a tenth of its total award. He further noted that LTD has not indicated whether it is seeking ETC status on a census block level or census block group level, nor has it identified the specific census blocks receiving RDOF support. Mr. Greene further testified that if LTD is seeking ETC designation on a census block group level, it also has not indicated that it will provide the required services, such as Lifeline, in any areas where it seeks designation as an ETC but will not receive RDOF support.

Mr. Greene testified that LTD must deploy facilities and offer gigabit, low-latency service to all Indiana census blocks for which it received RDOF funding within six years of receiving FCC approval for the funding. He stated that LTD has not indicated that it will comply with the RDOF buildout timeline. Mr. Greene also expressed his opinion that LTD submitted bids for many Indiana census blocks that were not economically sustainable. He stated the RDOF Auction was predicated on a reserve price set for what would generally be required to build out a FTTH network. He said that while it may be possible to build a FTTH network for less than the FCC's reserve price if there is existing infrastructure nearby, it would be impossible to build a network for scratch for much less than the reserve amount. Mr. Greene testified that LTD won the RDOF Auction in many areas (including Wayne and Randolph counties) with less than 30 percent of the reserve amount.

While acknowledging some INRBA members bid and won RDOF funding for census blocks at substantially lower funding levels, Mr. Greene indicated this is because they are local companies with deep roots in rural Indiana or operate on a not-for-profit basis. Mr. Greene stated that he cannot think of a legitimate reason why an out-of-state entity with no history of service in Indiana would pursue a bidding strategy that does not yield a return of, or on, its investment. He said that based on publicly available information, LTD 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 1, 2021. He further testified that LTD does not currently offer residential broadband service that even approaches the RDOF gigabit service tier and that it strikes him as odd that such an entity would commit to a very large fiber buildout and gigabit service for a 20-30 percent funding level.

Mr. Greene testified that LTD appears to be a wireless internet service provider operating in Wisconsin, Minnesota, Iowa, South Dakota, and Nebraska, and, according to LTD's website, it does not currently offer any fiber services in its service territory. He stated that LTD, a wireless internet company whose top tier service is "Home Office" (35 Mbps downstream/7 Mbps

upstream) has been provisionally awarded \$1.3 billion in 15 states across the country to provide gigabit tier service. Although Mr. Greene noted LTD's website mentions higher speeds are available, it does not provide pricing or location information.

Mr. Greene reviewed information from the Better Business Bureau ("BBB") relating to LTD's operations in Minnesota. He testified the BBB gives LTD's Minnesota operations a failing "F" rating and indicates that LTD is "not BBB accredited." He further testified the BBB states the reasons for its "F" rating are: (1) failure to respond to one complaint filed against business; (2) 14 complaints filed against business; and (3) length of time business has been operating.⁶

Mr. Greene testified that LTD did not provide evidence demonstrating it has the technical capability to deliver the gigabit service tier it bid for nor the managerial capacity to provide prompt and thorough customer service. He stated that based on publicly available information, LTD appears to be a very small company owned by a single individual, and that its corporate office appears to be a residential home in a suburban Las Vegas, Nevada neighborhood. He stated that as recently as February 25, 2019, LTD requested (and was granted) a waiver of the Connect America Fund ("CAF") Phase II Auction deadline for filing audited financial statements because 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 time frame were unsuccessful. He testified that in this Cause, LTD has not provided any evidence to show that it has the human capital to engineer, construct, and operate FTTH to serve the RDOF-awarded census blocks. He specifically noted that LTD's biographies of its "Key Management" filed in Cause No. 45519 are one sentence each and do not support LTD's claim that it has the staff necessary to complete a major FTTH build in Indiana.

Mr. Greene testified that based on his review of available information, LTD owns no infrastructure in Indiana. He stated that to provide the level of service throughout the RDOF-awarded census blocks, LTD will need to quickly deploy substantial infrastructure and expressed concern that LTD did not appear to be well-versed in deploying fiber optic networks. He further stated that LTD did not provide a project plan for its network buildout and did not submit a feasibility study for the Indiana census blocks that it won.

Mr. Greene testified that if an entity could propose gigabit service, bid support levels down to unreasonably low levels to force out *bona fide* gigabit service providers such as INRBA's members, and then be allowed to avoid the consequences of its bid strategy by providing substandard service or switching to a lower speed service or different technology, then it would deprive rural Hoosiers of the high-speed broadband service that they otherwise could have received. Mr. Greene expressed disbelief that LTD can meet its obligations to deploy facilities and provide gigabit service within the FCC's required timeframe because LTD did not provide any evidence or detail showing how it will deliver gigabit service other than vague references to FTTH, LTD's history of poor customer service, lack of staffing, lack of infrastructure or ties to Indiana, and economically unviable bidding strategy.

⁶ We note that Mr. Greene provided a web link, which purports to be a bbb.org website; however, the link results in a Page 404 error.

Mr. Greene testified that the Commission serves as an important gatekeeper to ensure entities who receive federal high-cost support can deliver on the commitments they have made and meet the requirements to be designated as an ETC. He stated that LTD has not provided sufficient evidence to demonstrate that it has the managerial, financial, and technical capability to provide the services for which it won RDOF support. He noted that after winning support through the CAF Phase II Auction, LTD failed to obtain ETC designation in Nevada and Nebraska, and LTD defaulted on its CAF Phase II obligations for census blocks in those states. He concluded by recommending the Commission deny LTD's request for designation as an ETC.

C. **LTD's Rebuttal Evidence.** In response to Mr. Greene's testimony, Mr. Hauer began by noting that rural local exchange carriers have relied on USF support as a key subsidy for its business operations and have little experience with a business model where such subsidies do not exist. He testified that Mr. Greene's testimony is like the positions of other such carriers in other states, which raises the specter of a coordinated, nationwide effort to eliminate LTD as a potential competitor. He asserted that such positions were not supported by evidence but were motivated by fear that LTD will create competition in the rural local exchange carriers' traditionally subsidized footprints.

Mr. Hauer confirmed that the RDOF award to LTD for Indiana is \$5,455,691.79 to be paid annually over 10 years. He stated that LTD provided a list of the awarded census blocks and a map of Indiana identifying where the census blocks are located within the state as Attachment 2 to the Petition. He further clarified that LTD intends to serve as an ETC only in the service area defined by the approved census blocks.

As indicated in his direct testimony, Mr. Hauer testified LTD plans to begin construction within three months of the FCC authorizing support to LTD. He stated that assuming the FCC follows similar procedures for the approval and disbursement as it used for the CAF Phase II Auction, LTD has developed an aggressive construction timeline and plans to meet or exceed RDOF milestone requirements by completing construction of 20 percent of locations by the end of 2023, 40 percent by the end of 2024, 60 percent by the end of 2025, 80 percent by the end of 2026, and 100 percent by 2027. He reiterated that LTD intends to comply with all RDOF and Commission requirements. Mr. Hauer also confirmed that LTD's Lifeline customers will prepay for phone service and that none of LTD's plans will be free or appear to be free to the customer.

In response to Mr. Greene's assertion that LTD submitted bids for many Indiana census blocks that were not economically sustainable, Mr. Hauer testified that such assertions were unsupported speculations. He noted that Mr. Greene has no personal knowledge of or access to LTD's financial data, engineering plans, or business model. He stated that Mr. Greene, as a subsidy-based legacy rural exchange competitor with a business model that is very different from LTD's, has no personal knowledge of the facts or economic considerations supporting LTD's business decisions. Mr. Hauer stated 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.

Mr. Hauer testified that LTD has installed fiber both with its own workforce and contracted workforce and that Mr. Greene's statement to the contrary is false. He further testified that as with

many large internet service providers, LTD offers different plans in different areas including plans up to 300/300 Mbps service, but that it does not list the plans on its website because they are not yet available across its 50,000 square mile footprint.

Regarding LTD's BBB rating in Minnesota, Mr. Hauer testified that Mr. Greene failed to explain how a small sample of unverified and hearsay reviews in Minnesota is significant enough to raise questions that should result in denial of LTD's Petition in Indiana and ignores other sources of customer reviews. He stated that if actual, verified concerns arise based on evidence in Indiana, the Commission has authority to investigate and remedy them, but the Commission should not deny LTD's ETC designation based on speculation that LTD will not render satisfactory service quality and customer service.

Mr. Hauer testified that by awarding RDOF funding to winning bidders, the FCC has determined that the winning bidders, including both LTD and New Lisbon (as New Lisbon stated in its own ETC petition in Cause No. 41052 ETC 75 S1), have the legal, financial, and technical ability to build the projects for which RDOF funding was awarded. Mr. Hauer testified that LTD has employees in 23 states, has engaged outside engineering and construction companies, and is positioning resources to begin construction. He stated LTD is also preparing to hire and train over 500 construction staff, including many local workers in Indiana, but noted that to be fully staffed at this time would be a waste of resources. He stated that LTD scaled its staff to meet its CAF performance obligations and there is no reason to believe it will not do the same with respect to RDOF.

Mr. Hauer explained LTD's request for a short delay to provide audited financial statements and testified that LTD provided its confidential financial information in the CTA proceedings. Further, Mr. Hauer testified that LTD completed its fifth-year obligation of 80 percent CAF Phase II buildout in both Iowa and Minnesota by the end of year one—four years ahead of the CAF Phase II requirement. Additionally, he testified, LTD will also finish 100 percent of its CAF Phase II obligation for Illinois later this year—also four years ahead of schedule.

Regarding Mr. Greene's concerns about LTD having insufficient infrastructure and staffing in Indiana, Mr. Hauer testified that LTD has years of experience in growing both its workforce and network at a rapid pace. As an example, he stated in 2020, LTD constructed 395 new tower sites and increased its workforce by over 30%. He stated 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. Mr. Hauer further testified that the current broadband speeds LTD makes available to customers has nothing to do with its RDOF commitment to offer gigabit speeds over fiber and does not mean LTD is not capable of doing so. He confirmed LTD is committed to provide 1000/500 Mbps low latency service in all areas where it has been awarded RDOF funding.

Regarding LTD's default following the CAF Phase II Auction for one single, small census block in each of Nebraska and Nevada where LTD decided that the compliance costs would be disproportionate to the small area to be served, Mr. Hauer explained that instead of accepting the award and defaulting later, LTD chose to pay the FCC a total of \$3,563. He stated that many other CAF Phase II applicants chose to do the same for very small areas. He testified that LTD acted

responsibly by notifying the FCC early that it would not proceed with the projects based on the cost-to-benefit analysis. Additionally, he noted LTD has met the remainder of its CAF Phase II obligations and is ahead of schedule in many areas. Mr. Hauer stated that in Indiana, LTD has no intention of defaulting and has already performed its cost-benefit analysis. Mr. Hauer affirmed that LTD is ready, willing, and able to build out service in the Indiana RDOF award areas.

D. LTD's Docket Entry Response. In response to the Commission's April 14, 2021 Docket Entry, LTD confirmed that it will provide 1000/500 Mbps low latency service in all areas where it has been awarded RDOF funding. LTD also confirmed that its requested ETC service area is defined by census blocks and intends to only serve as an ETC in those portions of the census blocks that are approved for RDOF funding. LTD provided an excel spreadsheet with a list of applicable census blocks.

Regarding its provision of Lifeline services, LTD confirmed that it does not plan to offer Lifeline plans that are subject to the FCC's "usage" requirements in 47 CFR 54.407. In addition, LTD's Lifeline customers will prepay for phone service. LTD will send a monthly bill 20 days in advance of the start of the next service cycle. Service will be provided if the bill is paid by the due date. Service will be suspended pending payment if the bill is not paid on the due date. LTD also indicated it does not plan to offer Lifeline voice or broadband services to eligible Lifeline customers that appear to be free to the end user customer because the federal Lifeline subsidy covers the monthly recurring cost of the service and confirmed none of the plans offered by LTD will be free or appear to be free to the end user customer.

Finally, LTD confirmed it has no affiliates and will not partner with any unaffiliated entities in offering or providing supported services in Indiana. Instead, LTD will contract with appropriate engineering, construction, and fiber companies to construct the network necessary to satisfy its Indiana RDOF obligations.

5. Commission Discussion and Findings. Pursuant to 47 U.S.C. § 214(e)(1)(A), a common carrier designated as an ETC shall be eligible to receive universal service support in accordance with 47 U.S.C. § 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 U.S.C. § 254(c). Under 47 C.F.R § 54.101, the FCC's rules identify ETC services that are eligible for universal service support, including voice telephony and broadband internet services. Pursuant to 47 C.F.R §§ 54.101(d) and 54.405, to receive universal service support, ETCs must offer Lifeline service.

The FCC established four programs within the USF to implement the statute: (a) the High-Cost Fund for rural, insular, and high-cost areas; (b) Schools and Libraries (the E-rate program), providing discounted telecommunications services to eligible schools and libraries; (c) Lifeline, providing low-income consumers with discounted voice telephony and broadband service; and (d) Rural Health Care, providing discounted telecommunications services to rural health care providers.⁷ The source of support for the RDOF funding falls under the High-Cost Fund. Therefore, we evaluate LTD's Petition based on the required criteria for an ETC applicant seeking

⁷ *Comprehensive Review of the Universal Serv. Fund Mgmt.et al.*, 22 F.C.C. Rcd. 16372, 16373 (2007).

support from the USF to provide service to high-cost areas. Because ETCs are required to offer Lifeline services, LTD also seeks designation as a Lifeline provider.

LTD seeks designation as an ETC for offering the federally supported implementation of expanded high-speed broadband and voice services for unserved rural Indiana residents. Based on the evidence in the record and subject to the conditions herein as discussed below, the Commission finds that Petitioner satisfies the requirements in GAO 2019-5 and meets the eligibility criteria for ETC designation as contained in 47 U.S.C. § 214(e)(1) and related FCC rules. Further, the Commission finds that designation of Petitioner as an ETC will allow it to deploy services in compliance with the awarded RDOF funding, satisfying the public interest analysis the Commission is required to perform under the *2005 FCC ETC Order*⁸ and GAO 2019-5. The Commission also find that Petitioner will be required to offer Lifeline as a participant in the high-cost program and has demonstrated its intent and capability to do so. Thus, Petitioner meets the eligibility criteria to provide Lifeline services pursuant to 47 C.F.R. § 54.101(d).

A. Requirement to Submit Five-Year Plan. Among other things, GAO 2019-5 requires ETC applicants to submit a five-year plan that describes with specificity the proposed improvements and upgrades to its network in the proposed designated service area. We are aware, however, that the FCC has waived the 5-year plan requirement for RDOF Auction winning bidders for the same reasons it waived the 5-year plan requirement for CAF II Auction recipients.⁹ The FCC, in waiving the 5-year plan requirement for CAF II Auction recipients, recognized the requirement in 47 C.F.R. § 54.202 was adopted to monitor a carrier's use of funding but that more specific measures to track deployment, including annual reporting of service and certification of compliance with benchmark milestones, had been adopted for the support recipients.¹⁰ Consequently, LTD will be subject to specific RDOF-required milestones.

Unlike the FCC, the Commission has not waived the requirement for previous auction winners to submit a 5-year plan, but rather has accepted from all ETC applicants a summary overview regarding how petitioners would meet auction milestones, information regarding tier and latency of committed broadband service, and a general overview of the technology to be employed to meet auction milestones. Mr. Hauer identified the network facilities and technologies to be used in providing the RDOF-supported services. More specifically, Mr. Hauer testified LTD planned to deploy a combination of network facilities and technologies with last mile voice and broadband service provided using fiber and fixed wireless microwave platforms. Although LTD currently provides service using primarily fixed wireless technology, Mr. Hauer testified that LTD has also installed fiber, both with its own workforce and contractors.

While LTD does not currently operate in Indiana, LTD provided general information concerning its plans for constructing and operating the system to provide services in Indiana, including when it expected to commence construction and estimated completion percentages to meet or exceed RDOF milestones. More specifically, Mr. Hauer testified that LTD has employees

⁸ *In the Matter of Fed.-State Joint Bd. on Universal Serv.*, 20 F.C.C. Rcd. 6371, 6388 (2005) (“*2005 FCC ETC Order*”).

⁹ *Auction 904 Results Notice*, at ¶ 36, FN 71, citing to *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, Public Notice, WC Docket No. 09-197 *et al.*, 33 F.C.C. Rcd 6696, at 6699-6700 (WCB 2018).

¹⁰ *Id.*.

in 23 states, is engaged with outside engineering and construction companies, and preparing to hire and train over 500 construction staff that includes many local Indiana workers. The evidence demonstrates LTD plans to use its own staff and retain appropriate engineering, construction, and fiber companies to construct the necessary infrastructure. In addition, Mr. Hauer testified that LTD plans to commence construction for the provision of Lifeline services in Indiana within three months of the FCC issuing its ready-to-fund notice for the RDOF award and confirmed its intention to meet or exceed the RDOF milestone requirements. During the evidentiary hearing, Mr. Hauer also provided additional confidential details regarding LTD's network deployment in the service area.

Finally, LTD provided information concerning its intended broadband tier and latency service in the ETC designated service area, including its commitment to a gigabit, low-latency performance tier of service to satisfy RDOF requirements. Although LTD does not currently provide service at the committed speed tier, Mr. Hauer confirmed LTD will provide 1000/500 Mbps low latency service to areas within its ETC designated service area.

Therefore, the Commission finds that the information provided by Petitioner, coupled with the FCC reporting requirements for RDOF recipients over the ten-year support term, satisfies the information objective in GAO 2019-5 and waives the requirement for Petitioner to provide a separate five-year plan.

B. Common Carrier Status. The first requirement for ETC designation is status as a common carrier under federal law. The term "common carrier" under 47 U.S.C. § 153(11), in pertinent part, means any person engaged as a common carrier on a for-hire basis in interstate communication utilizing either wire or radio technology. The Commission has granted LTD, under Cause No. 45519 on this same day, a CTA certifying it as a CSP.¹¹ LTD has also confirmed it will provide voice telephony as a supported service and broadband services, as an FCC public interest obligation pursuant to 47 C.F.R. § 54.309. Therefore, we find that Petitioner is a common carrier for purposes of obtaining ETC designation under 47 U.S.C. § 214(e)(1).

C. Required ETC Services. To receive funding in high-cost areas as part of the RDOF, Petitioner must provide voice telephony and broadband services in its designated census blocks and offer the Lifeline discount on the supported services. The evidence, as discussed below, demonstrates that Petitioner's proposed voice telephony, broadband services, and Lifeline services comply with applicable requirements and that Petitioner does not have any affiliates and, therefore, will not rely upon any affiliate to provide the services.

i. Voice Telephony Services. Pursuant to 47 C.F.R. § 54.101(a), eligible voice telephony services must provide: (1) voice-grade access to the public switched network or its functional equivalent; (2) minutes of use for local service provided at no additional charge to end users; (3) access to the emergency services provided by local government or other public safety organizations to the extent implemented; and (4) toll limitation services to qualifying

¹¹ The Commission's Order in Cause No. 45519 authorizes the provision of telecommunications services in the form of interconnected VoIP services, dedicated transport telecommunications services, and facilities-based local exchange services and information services in the form of internet access service and broadband service.

low-income consumers.¹² Petitioner meets the four voice telephony service requirements as follows:

1. Voice-Grade Access to the Public Switched Telephone Network. Eligible voice telephony services must provide voice-grade access to the public switched telephone network or its functional equivalent. Mr. Hauer testified that LTD will provide its services using a combination of network facilities and technologies. Its last-mile voice and broadband services are provided using fiber and fixed wireless microwave platforms. For its transport backbone, Petitioner relies upon point-to-point licensed wireless connections, owned fiber, leased dark fiber, and Ethernet. LTD will deploy these network arrangements to provide supported voice services and meet broadband requirements for RDOF support. Using this approach, Petitioner plans to provide voice-grade access to the PSTN by providing interconnected VoIP service over its broadband networks throughout the designated service area. Accordingly, we find that Petitioner satisfies the voice-grade access requirement.

2. Local Usage. Eligible voice telephony services must provide minutes of use for local service at no additional charge to end users. Although the FCC has not required a minimum amount of local usage be offered by an ETC, Mr. Hauer testified that LTD will meet the local usage requirement by including unlimited local calling in its rate plans. Petitioner also committed to comply with any minimum local usage requirements adopted in the future by the FCC or this Commission. Therefore, we are satisfied that Petitioner's offering will be consistent with the Act's requirement that consumers have access to quality services at just, reasonable, and affordable rates. Based on the evidence, we find that Petitioner satisfies the local usage requirement.

3. Access to Emergency Services. As part of a universal service offering, eligible voice telephony services must provide access to emergency services provided by local government or other public safety organizations, such as 911 and E911, to the extent the local government in an eligible carrier's service area has implemented 911 or E911 systems. Mr. Hauer testified that LTD will confirm each subscriber's physical address for service and will notify subscribers about the importance of keeping this information updated. LTD currently provides its VoIP customers with access to 911/E911 emergency services through an arrangement with Inteliquent, a certified telecommunications carrier in Indiana. Emergency calls from LTD customers are connected to Inteliquent's network via high-speed SIP trunks at LTD's datacenters. The SIP trucks are configured for High Availability IP to ensure maximum call processing effectiveness. As an ETC, Petitioner committed to continue to provide access to these critical services to customers throughout its service territory. Based on the foregoing evidence, we find that Petitioner satisfies this requirement.

4. Toll Limitation for Qualifying Low-Income Customers. A toll limitation service, as defined by 47 C.F.R. § 54.400(b)-(d), allows customers to either block the completion of outgoing long-distance calls or to specify a certain amount of toll usage to prevent them from incurring significant long-distance charges and risking disconnection. Toll limitation service is included as part of the definition of voice telephony service, which is a

¹² *Restoring Internet Freedom Order on Remand*, 35 FCC Rcd 12328 (15) (2020), effective January 7, 2021, reordered 47 C.F.R. § 54.101; however, the applicable requirements are materially unchanged.

supported Lifeline service.¹³ Therefore, each ETC must still offer a toll limitation service unless the Lifeline offering provides a set number of minutes that do not distinguish between toll and non-toll calls. Mr. Hauer testified that LTD does not presently distinguish between local exchange and long distance calls in its voice offering. Consequently, LTD's internet broadband plans that include voice services do not apply any additional charge for interexchange calls, making toll blocking unnecessary. Mr. Hauer stated that if, in the future, LTD offers a service plan that does distinguish between toll and non-toll calls—and which makes additional charges for toll calls possible—Petitioner will offer toll limitation service to qualifying low-income customers at no additional charge. Therefore, we find that Petitioner satisfies this requirement.

ii. Broadband Internet Access Service. Pursuant to 47 C.F.R. § 54.101(c), an ETC subject to a high-cost public interest obligation to offer broadband internet access services who is not receiving frozen high-cost support is required to offer broadband services within the areas where it receives high-cost support. Under GAO 2019-5, these broadband services must provide the capability to transmit data to and receive data by wire or radio from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but excluding dial-up service. Mr. Hauer testified that LTD expects to offer a similar selection of broadband internet access plans that it currently offers as set forth in Attachment 3 to Petitioner's Exhibit 1, which includes plans with speeds ranging from 25/3 Mbps to 1000/1000 Mbps. Although this Attachment indicated LTD has not finalized its service plans for its ETC designated service area, Mr. Hauer testified LTD is committed to provide 1000/500 Mbps low latency service in all areas where it has been awarded RDOF funding.

INRBA questioned LTD's ability to provide the broadband service required for RDOF funding because LTD does not currently provide service, employ staff, or have facilities in Indiana and does not currently offer residential broadband service in any state that meets the RDOF-supported gigabit service tier. However, INRBA offered no evidence demonstrating that LTD will not, or cannot, provide the RDOF-supported broadband service. There is no requirement that ETCs seeking federal high-cost support, such as RDOF support, have operations or provide telecommunications services in Indiana prior to being designated as an ETC. Nor does the fact that LTD does not currently provide broadband services at the speeds required for RDOF support demonstrate that LTD will not or is not capable of providing such services in the future. By awarding RDOF funding to the winning bidders through its short- and long-form application process, the FCC will ultimately determine the winning bidders have sufficient financial and technical ability to build the projects. Therefore, based on the evidence, we find that Petitioner has satisfied this requirement.

iii. Carrier Obligation to Offer Lifeline. Under 47 C.F.R. §§ 54.101(d) and 54.405(a), ETCs, whether seeking the designation for universal service support for high-cost areas or solely to provide universal service support for low-income consumers, must make Lifeline service available to qualifying low-income consumers. Additionally, 47 C.F.R. § 54.401 defines Lifeline service, in part, as a non-transferrable retail service offering provided directly to qualifying low-income consumers for which they pay reduced charges. Mr. Hauer testified Petitioner will offer Lifeline service in addition to its high-cost offering and will advertise its Lifeline service as required by the FCC rules. At the hearing, Mr. Hauer testified that LTD's

¹³ 47 C.F.R. §§ 54.400(m), 54.401(a)(2).

Lifeline offering will apply to its voice telephony services, and not its broadband services. Accordingly, we find the evidence demonstrates that Petitioner satisfies the requirement to offer Lifeline service and that Petitioner will comply with the FCC rules for its Lifeline service offerings.¹⁴

D. Functionality in Emergency Situations. Under 47 C.F.R. § 54.202(a)(2), applicants for ETC designation must demonstrate their ability to remain functional in emergency situations. This includes a demonstration that an applicant has a reasonable amount of back-up power to ensure functionality without an external power source, can reroute traffic around damaged facilities, and can manage traffic spikes resulting from emergencies. Mr. Hauer provided a detailed description of LTD's planned network redundancy, reliability, and battery power plans, which include the provision of UPS to customers. Based on the evidence presented, we find Petitioner has demonstrated its ability to remain functional in emergency situations and, therefore, satisfied this requirement.

E. Advertising Requirements. Pursuant to 47 C.F.R. 54.201(d)(2), a common carrier designated as an ETC carrier eligible to receive universal support shall advertise the availability of and charges for such services using media of general distribution. Additionally, 47 C.F.R. § 54.405(b) requires a carrier to publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service. Mr. Hauer testified that Petitioner will advertise the availability of supported services throughout its designated service areas using direct mail. He also confirmed LTD's agreement to comply with all form and content requirements for advertising that are adopted by the FCC or this Commission. In addition, LTD will conduct direct advertising to Lifeline-eligible customers in compliance with the FCC's rules. Petitioner provided a working example of its advertising; however, during the evidentiary hearing, Mr. Hauer corrected the sample advertising provided as Attachment 4 to Petitioner's Exhibit 1 to clarify that the Lifeline discount will not be applicable to broadband internet service.

At the evidentiary hearing, Mr. Hauer was questioned regarding a notification from the Minnesota Department of Commerce regarding LTD's Lifeline rates not being published on its website. Mr. Hauer explained that the notification was received prior to the end of the three-year deadline and therefore was not out of compliance. Mr. Hauer again confirmed LTD's intent to comply with Lifeline requirements in Indiana.

Based on the evidence, we do not find the publication issue in Minnesota sufficient to conclude that LTD will not comply with Lifeline advertising requirements in Indiana and, accordingly, find that Petitioner satisfies this requirement. Upon or before initiating service, Petitioner shall include the following information in its consumer marketing materials in language that is clear and comprehensible to consumers: (1) pricing information for individual services and bundles; (2) terms and conditions of service; (3) the dollar amount of a Lifeline discount; (4) the identity of the services to which a Lifeline discount can be applied; and (5) an explanation of the terms and conditions of the Lifeline discount. Further, consistent with the Commission's prior ETC Orders, Petitioner will be required to submit informational tariffs regarding its Lifeline offering. Additionally, Petitioner shall submit documentation demonstrating that it will offer and advertise

¹⁴ We note that 47 C.F.R. 54.401(b)(4) provides that, beginning December 1, 2021, ETCs must provide the minimum service levels for broadband Internet access service in every Lifeline offering.

the Lifeline discount for its broadband plans offered pursuant to 47 CFR § 54.805 and as required pursuant to federal Lifeline rules, including 47 C.F.R § 54.401(b).

F. Petitioner’s Designated ETC Service Area. Under 47 C.F.R. § 54.207(a), service area means a geographic area established by a state commission for determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from USF mechanisms. Petitioner seeks ETC designation for the specified areas in which it will receive RDOF funding. Petitioner described the service area in Attachment 2 of Petitioner’s Exhibit 1 and identified the census blocks for which it seeks ETC designation in an attachment to Petitioner’s Exhibit 4. Additionally, the Commission finds that an analysis pursuant to the FCC’s rule in 47 C.F.R. § 54.207(c) to define a service area served by a rural telephone company as defined in 47 C.F.R. § 51.5 is not necessary. This rule is in place to prevent “cream-skimming,” a practice by which a CSP may attempt to provide service only to low-cost customers while disregarding less profitable customers. In the *RDOF Order*, the FCC granted forbearance “from the statutory requirement that the ETC service area of [an RDOF] participant conform to the service area of the rural telephone company serving the same area.”¹⁵ Therefore, the Commission approves LTD’s requested service area as set forth in Petitioner’s Exhibit 1, Attachment 2 and Exhibit 4.

G. Facilities Ownership. Consistent with the requirements of 47 U.S.C. § 214(e) and 47 C.F.R. § 54.101 through 54.207, Petitioner will provide all services required to be eligible for high-cost universal service support using its own facilities or, if necessary, through resale of another carrier’s services. Mr. Hauer testified Petitioner would provide all services required to be eligible for high-cost universal service support using its own facilities or, if necessary, through resale of another carrier’s services. LTD intends to use fiber and fixed wireless microwave platforms for 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. Based on the evidence, we find Petitioner has satisfied the requirement that an ETC provide the required voice telephony and broadband services through its own facilities or a combination of its own facilities and resale of another carrier’s services under 47 U.S.C. § 214(e)(1)(A).

H. Financial and Technical Capability. 47 C.F.R. § 54.202(a)(4) requires an ETC to demonstrate it is financially and technically capable of providing the Lifeline service in compliance with subpart E, and 47 C.F.R. § 201(h) further requires that a state commission shall not designate a common carrier as an ETC for purposes of receiving support only for Lifeline unless the carrier seeking such designation has demonstrated it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E. The Commission finds the foregoing specific criteria do not apply to Petitioner because it is seeking ETC designation to receive high-cost support through RDOF funding.

I. Public Interest Considerations. The designation of Petitioner as an ETC requires a public interest analysis pursuant to 47 C.F.R. § 54.202(b).¹⁶ In the absence of statutory requirements for evaluating public interest, the FCC recommended the following analysis:

¹⁵ *RDOF Order*, at ¶ 93.

¹⁶ We note that, like the FCC did with the requirement to submit a five-year plan, the FCC waived the requirement that an ETC applicant demonstrate it will satisfy applicable consumer protection and service quality standards and

The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.¹⁷

One of the principal goals of the Act is to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies to all citizens, regardless of geographic location or income.¹⁸

INRBA generally questioned the public interest of granting ETC designation to LTD. INRBA, through the testimony of Mr. Greene, essentially expressed concern that LTD would not meet the RDOF build out required timelines and questioned the economics of LTD's bids along with its capabilities to provide the RDOF-supported services. However, Mr. Greene provided no factual evidence to support his concerns. In addition, we note that it is the FCC, and not this Commission, that has the jurisdiction and responsibility to review and evaluate the RDOF bids and to determine whether LTD has the required financial and technical abilities to meet the RDOF-requirements in awarding RDOF support. Although Mr. Greene did point to one BBB review relating to LTD's Minnesota operations, we decline to give it much weight because it is a single source of customer reviews and includes a limited number of customer complaints in a single state.

Mr. Greene also expressed concern that LTD would default on its RDOF obligations as it had done in Nebraska and Nevada following the CAF II Auction. However, on rebuttal, Mr. Hauer explained that due to the nature of the auction, the areas ultimately awarded to a winning bidder can create unusual results and noted several other auction winners had also defaulted for similar reasons as LTD. He explained that LTD acted responsibly by notifying the FCC early rather than accepting the award and defaulting later.

As indicated above, Mr. Hauer provided sufficient evidence demonstrating LTD's commitment to fulfilling the terms of the RDOF auction and to provide the required supported services in the census blocks that the FCC awarded to LTD. Specifically, Mr. Hauer testified that LTD has no plans to default on any Indiana census blocks, and that LTD is ready, willing, and able to build out service in the Indiana RDOF award areas. Because designation of Petitioner as an ETC will allow LTD to receive RDOF support for projects that will help close the digital divide in selected portions of Indiana, we find that designation of Petitioner as an ETC in the requested service area will promote the public interest.

i. Advantages of Petitioner's Service Offerings. The evidence of record demonstrates Petitioner's proposed project will directly benefit consumers. It will promote

instead would presume that designation will serve the public interest. See Auction 904 Results Notice, at ¶ 36, FN 71.

¹⁷ 2005 FCC ETC Order, 20 FCC Rec. at 6388.

¹⁸ *Telecom. Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996).

increased competitive choice, resulting in greater access to high-speed broadband and voice services, as well as improved service quality for customers in the requested ETC service area. Petitioner's proposed project will also advance the Act's principal goals of securing lower prices and higher quality services for consumers and encouraging the rapid deployment of advanced communications technology to all citizens.

ii. **Impact on Universal Service Fund.** We have previously recognized that the FCC has undertaken various steps to address the growth in high-cost universal service support disbursements.¹⁹ Notably, the funds that will support Petitioner's projects will come directly from RDOF funding already allocated by the FCC for Petitioner's deployment to unserved areas. If these funds were not awarded to Petitioner, they would be awarded to another provider, possibly in another state. Additionally, the use of the RDOF Auction to award the funds helped ensure that funding went to bidders who will provide services to unserved or underserved areas for the lowest possible cost to the USF. Further, the Lifeline services offered by Petitioner as part of its ETC designation will only receive support to the extent Petitioner obtains Lifeline customers and provides discounted service. For these reasons, we find that designation of Petitioner as an ETC will not have a negative impact on the USF.

iii. **Consumer Protection.** One of the requirements established by the *2005 FCC ETC Order* was that, regardless of certification date, all ETCs must submit to the FCC, on an annual basis, certification that the ETC is compliant with 47 C.F.R. § 54.202(a)(3) by demonstrating that they meet applicable service quality standards and consumer protection rules. Petitioner provided evidence that it will satisfy all applicable state and federal requirements related to consumer protection and service quality standards with respect to the services provided using RDOF Auction funding, including implementation of policies regarding Customer Proprietary Network Information and customer rights and responsibilities in complaint resolution. We note that Indiana has consumer protection statutes for voice telecommunications services, such as Indiana Code ch. 8-1-29, which apply to Petitioner's voice telephony service. Based on the record, we find Petitioner has demonstrated it will meet applicable service quality standards and consumer protection rules.

iv. **Affordable Rates.** We must also consider whether designation of Petitioner as an ETC will ensure the availability of quality telecommunications services at just, reasonable, and affordable rates. *2005 FCC ETC Order* at 6388. Attachment 3 to Petitioner's Exhibit 1 sets forth LTD's proposed service offerings and rates as announced annually by the FCC's Wireline Competition Bureau and Office of Economics and Analytics.²⁰ We note that the FCC will require Petitioner to offer voice telephony and broadband offerings to include at least one plan at rates that are reasonably comparable to rates for similar service in urban areas. Based on the foregoing, we find that Petitioner intends to offer quality telecommunications services at just, reasonable, and affordable rates.

v. **Commitment to Provide Supported Universal Service.** Petitioner provided evidence that it is prepared to deploy its own facilities or to use a combination of its own facilities and resale of another carrier's services to provide the supported services to customers

¹⁹ *Perry-Spencer Commc 'ns, Inc.*, Cause No. 41052 ETC 53, 2008 WL 9832656 (IURC July 24, 2008).

²⁰ See WC Docket No. 10-90, FCC Public Notice DA 20-1490 (November 30, 2020).

within its proposed Indiana designated service area. Petitioner's commitment to provide service satisfies the requirements of 47 C.F.R. §§ 54.202(a)(1)(i) and 54.405(a). Accordingly, we find that Petitioner has demonstrated its willingness and ability to provide service throughout its requested designated service area.

vi. Provision of Universal Service. As an ETC serving areas known to be unserved or underserved, Petitioner must respond to Commission inquiries regarding its ability to serve customers in the event no common carrier will serve a community pursuant to 47 U.S.C. § 214(e)(3) or if an ETC serving the same designated service area or portions thereof seeks relinquishment of its obligations as an ETC under 47 U.S.C. § 214(e)(4).

vii. Additional Public Interest Analysis. ETC designation confers both benefits and burdens upon a telecommunications service provider. Because the designation gives the provider the right to apply for USF, it is essential that the provider comply with its obligations to contribute to public interest funds and not have a competitive advantage over other Indiana telecommunications carriers by avoiding such obligations. This is particularly true in this instance, where Petitioner, essentially, may be viewed as representing the state of Indiana on a national stage with its participation in the RDOF Auction. Petitioner's participation in this program may help bring additional federal grant monies to Indiana and will help keep Indiana at the technological forefront. While these benefits certainly serve the public interest in our state, Petitioner's participation in the program may also invite an additional level of scrutiny, rendering regulatory and legal compliance paramount. Based on the evidence and foregoing analysis of the public interest in this Cause, we find that approving Petitioner's ETC designation in the requested service area will promote the public interest and further the goals of the Act.

6. Regulatory Oversight and Prospective Reporting Requirements. The Commission has recognized certain specific regulatory requirements that competitive ETC applicants must satisfy to secure and maintain their ETC status in Indiana.²¹ Such regulatory requirements stem from the FCC's mandate that state commissions certify that USF support is being used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, as set forth in 47 U.S.C. § 254(e). Absent such a certification, carriers will not receive such support. For the Commission to satisfy its ETC certification requirements to the FCC, it requires ETC applicants to track separately their USF expenditures.

The record reflects Petitioner's intention to comply with applicable Indiana requirements with respect to fees, charges, and reports. Petitioner must also comply with USF tracking requirements previously established by the Commission to ensure that funds received from Universal Service Administrative Company ("USAC") for Indiana are devoted to furthering universal service goals within Petitioner's designated service area. Petitioner's Lifeline terms and conditions of service shall be incorporated into its Lifeline informational tariff for Indiana and filed with the Commission as a compliance filing under this Cause for review and approval by the Communications Division before Petitioner makes its universal service offerings available to eligible customers in its ETC service area and filed with USAC pursuant to 47 C.F.R. § 54.401(d).

²¹ See, e.g., *In re Designation of Eligible Telecommunications Carriers*, Cause No. 41052 ETC 43, 2004 WL 1170027 (IURC March 17, 2004).

7. Prospective ETC Reporting Requirements. The Commission also finds that as a recipient of RDOF support, Petitioner is required to meet the applicable reporting requirements consistent with 47 C.F.R. § 54.313. Those requirements include, among others: (1) certification that the ETC is able to function in emergency situations; (2) certification that the pricing of the ETC's voice services is not more than two standard deviations above the applicable national average urban rate for voice services; (3) certification that the pricing of service meets the FCC's broadband public interest obligations and does not exceed the applicable benchmark; (4) disclosure of the ETC's holding company and operating company names, any affiliate relationships, and branding, as well as universal service identifiers; (5) certain reporting requirements specific to tribal lands to the extent recipient serves them; and (6) results of the ETC's network performance test. Petitioner's foregoing compliance filings shall be filed under this Cause or, if an applicable Cause is established by the Commission for annually certifying Indiana ETCs' continued eligibility to receive high-cost support, filed in said Cause instead of this Cause.

8. Conditions on Petitioner's Designation as an ETC. In accordance with the Commission's findings above, Petitioner shall be subject to the following conditions:

A. If another ETC serving Petitioner's service area relinquishes its ETC designation pursuant to 47 U.S.C. § 214(e)(4), or if no common carrier will provide the services that are supported by USF mechanisms pursuant to 47 U.S.C. § 214(e)(3), the Commission is required to ensure that all customers will continue to be served; consequently, Petitioner shall respond to Commission inquiries involving the affected ETC service area, or portions thereof, if such a situation occurs.

B. Pursuant to 47 C.F.R. § 54.401(d), prior to providing service in its designated service area or within 60 days of the final approval by the FCC, whichever occurs earlier, Petitioner shall file an informational tariff of its proposed Lifeline offerings with the Commission and USAC and notify the Commission in the form of a new tariff if any terms, conditions, or an allocation of minutes change.

C. Petitioner shall file with the Commission a copy of its annual reports and certifications that are required by the FCC pursuant to 47 C.F.R. § 54.313.

D. Petitioner shall publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service and establish safeguards to prevent customers from receiving multiple Lifeline subsidies at the same address as required by 47 C.F.R. § 54.405.

E. Petitioner shall submit documentation demonstrating that it will offer and advertise the Lifeline discount for its broadband plans offered pursuant to 47 CFR § 54.805 and as required pursuant to federal Lifeline rules, including 47 C.F.R. § 54.401(b). Such documentation shall be submitted as a compliance filing in this Cause within 60 days of the final approval by the FCC.

F. Pursuant to 47 C.F.R. §§ 54.410(f) and 54.416, Petitioner shall provide the Commission with a copy of its Lifeline re-certification results that it files annually with USAC and the FCC.

G. Petitioner shall pay all fees applicable to telecommunications carriers, such as the public utility fee, pursuant to Ind. Code ch. 8-1-6; the InTRAC fee pursuant to Ind. Code ch. 8-1-2.8; the Indiana USF fee pursuant to the Commission's Order in Cause No. 42144; the statewide E-911 fee pursuant to Ind. Code chs. 36-8-16.6 and 36-8-16.7; the Underground Plant Protection (811) fee pursuant to Ind. Code ch. 8-1-26; and any other applicable fees.

H. In accordance with GAO 2019-5, if Petitioner wants to add or delete census blocks from its approved ETC designated service area, Petitioner shall file a petition requesting an amendment to its service area under a subdocket to this Cause.

I. If the FCC changes the RDOF funded locations within an area that Petitioner is required to serve, Petitioner shall promptly provide the Commission with a copy of the FCC's notice evidencing this change via a compliance filing in this Cause.

Based on the evidence presented and discussed above and subject to the compliance requirements set forth in this Order, we find that Petitioner has met all the ETC eligibility requirements, and the public interest is served by Petitioner serving the requested ETC service area. As an ETC in Indiana, Petitioner must comply with the prospective reporting requirements and conditions set forth herein. The Commission has the statutory authority to investigate, as it deems necessary, Petitioner's compliance with this Order and its eligibility for ETC designation.

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

1. LTD Broadband, LLC's request for designation as an ETC in the requested ETC service area, as described in Petitioner's Exhibit 1, Attachment 2 and listed in Petitioner's Exhibit 4, for participation in the RDOF program is granted.

2. Petitioner's request for authority to apply to receive federal USF support pursuant to 47 U.S.C. § 254 is granted, subject to Petitioner's compliance with the terms, conditions, and reporting requirements of this Order and applicable laws.

3. Petitioner shall comply with the Reporting Requirements and the Conditions set forth above in Finding Nos. 8 and 9 with respect to Petitioner's designation as an ETC.

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

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

APPROVED: JUN 02 2021

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

Dana Kosco
Secretary of the Commission