

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Application of LTD Broadband LLC for)	
Designation as an Eligible)	
Telecommunications Carrier for the Purpose)	Docket No. 21-LTDT-430-ETC
of Providing Services Supported by the)	
FCC's Rural Digital Opportunity Fund.)	

**SUBMISSION OF LTD BROADBAND'S WAIVER FILING AT THE FEDERAL
COMMUNICATIONS COMMISSION**

LTD Broadband LLC ("LTD Broadband" or the Company) hereby submits a copy of its *Petition for Limited Waiver (Attachment A)*, filed with the Federal Communications Commission ("FCC") on June 7, 2021, requesting a limited waiver of Section 54.804(b)(5) of the FCC's rules granting it additional time to demonstrate it has obtained designation as an Eligible Telecommunications Carrier ("ETC") in Kansas and other states.

Respectfully submitted,

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	AU Docket No. 20-34
)	
LTD BROADBAND, LLC)	WC Docket No. 10-90
)	
Petition of for Waiver of Section 54.804(b)(5))	WC Docket No. 19-126
of the Commission's Rules)	

To: Chief, Wireline Competition Bureau

PETITION FOR LIMITED WAIVER

June 7, 2021

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Summary

LTD Broadband, LLC (“LTD Broadband”) hereby seeks a limited waiver of Section 54.804(b)(5) of the Commission’s Rules so it can have additional time to demonstrate that certain states have approved LTD Broadband as an eligible telecommunications carrier (“ETC”). Although LTD Broadband timely received ETC designations in seven of its 15 states, for a variety of reasons state commissions have not issued final approval orders for other states. Given LTD Broadband’s diligent efforts to file and prosecute ETC applications for all states and Commission staff’s ongoing review of LTD Broadband’s long-form application, an extension is warranted and would be consistent with Commission practice.

There is good cause for grant of a waiver. First, as discussed in detail in the attached petition, in several states, LTD Broadband filed its ETC application within 30 days from the release of the *Auction Closing Public Notice*. In others, LTD Broadband filed within 30 days of the June 7 deadline consistent with state commission guidelines. In other states, LTD Broadband made the decision to defer filing for strategic reasons. LTD Broadband believes that ETC approval is imminent in a number of states, but others will take several months – and in those states, LTD Broadband is not alone in seeking waiver. In a few states, the intervention of a third party is delaying state commission approval. Given that seven states have completed the ETC designation process, LTD Broadband has no reason to believe that it will not receive final approval for all states.

Grant of a waiver also would be consistent with the public interest and Commission practices. The policy goal for the RDOF program is to support the deployment of broadband and voice services as expeditiously as possible to unserved and underserved areas. LTD Broadband is committed to its deployment obligations and is working with Commission staff to finalize its long-form application. Denying waiver of Section 54.805(b)(5) would delay the deployment of voice and broadband service to hundreds of thousands of rural locations, a draconian result that would be inconsistent with the public interest and Commission practice.

Notably, in the CAF program, the Bureau consistently waived the ETC certification deadline, determining that the benefits of additional time outweighed strict compliance with the deadline. As just one example, in determining that it was ready to authorize Wisper ISP, Inc. (“Wisper”) for support, the Bureau, over the objection of a third party, cited the totality of the circumstances and found that Wisper’s delay did not constitute a lack of good faith that should result in its default. The Bureau determined that Wisper’s late-filed ETC designation did not delay the long-form application review process or the provision of voice and broadband services to consumers living in the areas where Wisper was awarded support. The Commission has not announced any change in this practice.

Accordingly, the Bureau should find that LTD Broadband has met the standard for waiver of Section 54.805(b)(5) and should therefore grant the requested waiver.

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To: Chief, Wireline Competition Bureau

PETITION FOR LIMITED WAIVER

LTD Broadband, LLC (“LTD Broadband”), pursuant to Section 1.3 of the Commission’s Rules, hereby respectfully requests waiver of Section 54.804(b)(5) to extend the June 7, 2021 deadline set forth in the *RDOF Auction Closing Notice*¹ for LTD Broadband to certify that it is an eligible telecommunications carrier (“ETC”) for the census blocks in various states where LTD Broadband is the auction winner for Rural Digital Opportunity Fund (“RDOF”) Phase I support. There is good cause for grant of this waiver because LTD Broadband has demonstrated good faith in seeking ETC approvals and has timely obtained approval in seven states. In any event, Commission staff is continuing to review LTD Broadband’s long-form application such that the additional time for the remaining states to approve ETC designation will not delay the deployment of voice and broadband service to eligible locations. Waiver also would be consistent with Commission practice established in connection with the Connect America Fund (“CAF”) Phase II program.

¹ *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes*, Public Notice, 35 FCC Rcd 13888, 13894 ¶ 17 (WCB 2020) (“*Auction Closing Public Notice*”).

Background and Status

On December 7, 2020, LTD Broadband was announced as a winning bidder in the RDOF Phase I auction in 15 states.² LTD Broadband timely filed its long-form application with the Commission and it is being reviewed by Wireline Competition Bureau (“Bureau”) staff.

On January 6, 2021, LTD Broadband began submitting its petitions and applications for ETC designation with the various states. Despite interventions and opposing comments in some of the states, state public service commissions have made substantial progress in reviewing and approving LTD Broadband’s petitions and applications. As of this date, LTD Broadband has been designated as an ETC for its RDOF census blocks in the following seven states:

Colorado

Illinois (expansion of CAF ETC designation)

Indiana

Minnesota (expansion of CAF ETC designation)

Missouri

Ohio

Wisconsin

For these states, LTD Broadband has uploaded the ETC designation orders, census blocks and certifications into the long-form application, as required by the *Auction Procedures Public Notice*.³

The discussion below summarizes the status of LTD Broadband’s diligent efforts to obtain ETC designation in the other states. In each case, LTD Broadband is extremely confident

² *Id.* at Attachment A.

³ *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020*, Public Notice, 35 FCC Rcd 6077 (WCB 2020) (“*Auction Procedures Public Notice*”).

that the state commission will designate LTD as an ETC. Upon receiving ETC designation, LTD will promptly upload the required information to its long-form application. LTD Broadband also will keep the Commission apprised on a monthly basis of the status of its outstanding ETC designations.

California (Docket No. A2106002)

On January 6, 2021, LTD Broadband's counsel sought guidance from the California Public Utilities Commission ("CPUC") on applications for ETC designations. As an initial matter, it was unclear at the time whether the CPUC would assert or decline jurisdictions over LTD Broadband's ETC designation because LTD Broadband would not be offering any regulated telecommunications service. Upon obtaining guidance from the CPUC, LTD Broadband filed for ETC designation on April 26, 2021. As other RDOF auction winners have noted, however, the California Public Utilities Commission ("CPUC") will only be approving five ETC petitions before the June 7 deadline.⁴ In each case, the CPUC had previously designated these auction winners as ETCs and they were able to take advantage of the informal Advice Letter process. All other ETC petitions, even those filed within 30 days of the *Auction Closing Public Notice*, will not be approved. The CPUC's Rules of Practice and Procedure establish a deadline of eighteen (18) months to resolve rate-setting proceedings.⁵ LTD Broadband's position thus is not unique among RDOF winners for California census blocks. Indeed, the Commission's ECFS database reflects the filing of waiver requests by a number of other RDOF winners, all of which cite the additional time it will take the CPUC to process, consider and approve ETC designations.⁶

⁴ California Public Utilities Commission Resolution T-17735 (June 03, 2021).

⁵ California Public Utilities Commission Rules of Practice and Procedure, §2.1(c).

⁶ See Cal.Net, Inc. Petition for Waiver, AU Docket No. 20-34 and WC Docket Nos. 10-90 & 19-126 (filed June 3, 2021); Wavelength LLC Petition for Waiver, AU Docket No. 20-34 and WC Docket Nos.

Iowa (Docket No. ETA-2019-0001)

As a CAF Phase II recipient for Iowa census blocks, LTD is already designated by the Iowa Utilities Board (“IUB”) as an ETC in Iowa (Docket No. ETA-2019-0001). Accordingly, consistent with the IUB’s rule at 199 Iowa Administrative Code (IAC) 39.3(3)(i), LTD Broadband was required to provide 30 days’ notice before the Commission’s June 7 deadline of its intent to amend the ETC designation. LTD Broadband timely filed its ETC amendment on May 7, 2021.

In a June 4, 2021 Order Requesting Additional Information, the IUB is requiring LTD Broadband to provide additional information within 30 days. This information relates to LTD Broadband’s existing ETC application. LTD Broadband expects to provide the requested information well within the 30-day time frame, and expects approval of its ETC amendment shortly thereafter.

Kansas (Docket No. 21-LTDT-430-ETC)

In Kansas, LTD Broadband anticipated aggressive intervention similar to what LTD Broadband experienced in Indiana⁷ and other RDOF auction winners experienced in Kansas.⁸ It

10-90 & 19-126 (filed June 2, 2021); Hankins Information Technology Petition for Waiver, AU Docket No. 20-34 and WC Docket Nos. 10-90 & 19-126 (filed May 25, 2021); One Ring Networks, Inc. Petition for Waiver, AU Docket No. 20-34 and WC Docket Nos. 10-90 & 19-126 (filed May 13, 2021); Etheric Communications, LLC Petition for Waiver, AU Docket No. 20-34 and WC Docket Nos. 10-90 & 19-126 (filed May 12, 2021).

⁷ See Application of LTD Broadband, LLC for Designation as an Eligible Telecommunications Carrier for the Purpose of Providing Services Supported by the FCC’s Rural Digital Opportunity Fund, Cause No. 41052 ETC 96, Order of the Indiana Utility Regulatory Commission (June 2, 2021).

⁸ See Application of AMG Technology Investment Group, LLC d/b/a Nextlink Internet for Expansion of its Eligible Telecommunications Carrier Designation for the Purpose of Providing Services Supported by the FCC’s Rural Digital Opportunity Fund, Order Denying Petitions to Intervene of United Companies and RLECs, Docket No. 21-AMGT-257-ETC (Kansas Corporation Commission, April 8, 2021); In the Matter of Resound Networks, LLC for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support from the FCC Rural Digital Opportunity Fund, Order Denying Petitions to Intervene of United Companies and RLECs, Docket No. 21-RNWT-254-ETC, (Kansas Corporation Commission, April 22, 2021).

retained a former general counsel to the Kansas Corporation Commission (“KCC”) to act as local counsel. Acquiring this level of experience and expertise to address anticipated adverse proceedings took some time. LTD Broadband filed its ETC application with the KCC on May 19, 2021. LTD Broadband anticipates that this application will be approved within the next 60-90 days, and hopes that the parties denied intervention in the two cited ETC proceedings elect to not seek intervention with respect to LTD Broadband’s ETC application.

Nebraska (Docket No. C-5256 NUSF-130)

Nebraska Public Service Commission (“NPSC”) staff advised LTD Broadband on May 5, 2021 that the NPSC has a 30-day approval process for ETC applications. LTD Broadband filed its ETC application on April 28, 2021, in sufficient time to meet the June 7 deadline. On May 7, 2021, the NPSC set an application protest deadline for June 7, 2021. No interventions or protests have been filed as of this date. LTD Broadband expects the ETC application to be approved at either the June 8, 2021 or June 29, 2021 NPSC commission meeting.

North Dakota (Docket No. PU-21-168)

On January 20, 2021, staff of the North Dakota Public Service Commission (“NDPSC”) called counsel for LTD Broadband and advised that it has a 30-day ETC application approval process (similar to Nebraska’s process). LTD Broadband filed its ETC application on May 7, 2021, in sufficient time to meet the June 7 deadline, and submitted a map of the proposed ETC area on May 17, 2021. On June 3, 2021, commission staff notified LTD Broadband that the NDPSC would issue a “notice of opportunity for hearing” on June 9, 2021 that would allow intervention requests until July 19, 2021. LTD Broadband does not anticipate any intervention and expects approval at the NDPSC’s August 4, 2021 meeting if not sooner.

Oklahoma

As in Kansas, LTD Broadband anticipated aggressive intervention. It retained a former head of the telecommunications division of the Oklahoma Corporation Commission (“OCC”) to act as local counsel. Acquiring this level of experience and expertise to address anticipated adverse proceedings took some time. LTD Broadband filed its ETC application and its application for a Certificate of Convenience and Necessity today.

LTD Broadband notes that, even if it had filed its ETC application within the 30-day period following the *Auction Closing Public Notice*, its application would not be approved by this time. Another RDOF long-form application, Resound Networks, LLC, filed its ETC application on January 5, 2021, but its June 4, 2021 petition for waiver indicates that it is pending as of that date.⁹ Windstream, which filed its ETC application with the OCC on April 15, 2021, also has sought waiver of the June 7, 2021 deadline.¹⁰

South Dakota (Docket No. TC21-0001)

LTD Broadband filed its ETC application with the South Dakota Public Service Commission (“SDPSC”) on January 6, 2021. On January 27, 2021, the South Dakota Telecommunications Commission (SDTA”) filed a petition to intervene, which the SDPUC granted on February 22, 2021. Since that time, LTD Broadband has responded to a discovery request from SDPUC staff and two discovery requests from the SDTA. Just last week, on June 2, 2021, the SDTA issued a third discovery request. LTD has until July 2, 2021 to respond to the discovery request, but expects to do so well before that date.

⁹ See Resound Networks, LLC Petition for Waiver, AU Docket No. 20-34 and WC Docket Nos. 10-90 & 19-126 (filed June 4, 2021).

¹⁰ See Petition of Windstream Services, LLC and Windstream Communications, LLC for Waiver of ETC Designation Deadline, AU Docket No. 20-34 (filed June 1, 2021).

On April 12, 2021, LTD filed an application for a Certificate of Authority (Docket No. TC21-014). The SDTA has filed to intervene in that proceeding as well.

LTD Broadband is engaged with SDPUC staff and SDTA in an effort to resolve the proceedings through stipulation. At this time, it is not known whether and to what extent either or both of the proceedings will be resolved without hearing. At this time, LTD Broadband estimates that it will receive approval of both applications by the end of August.

Texas (Docket No. 51693)

LTD Broadband filed its ETC application with the Texas Public Service Commission (“TPUC”) on January 7, 2021. On May 13, 2021, following LTD Broadband’s submission of requested supplemental information, TPUC staff recommended approval of ETC’s application. The sole remaining step is for the administrative law judge to issue a final order approving ETC designation. LTD Broadband expects approval very soon.

Overall, LTD has received ETC designations in seven states, and several more should be approved in the coming days and weeks. In some states, petitions to intervene and multiple discovery requests have slowed the approval process. Other than California, LTD Broadband expects to receive ETC designation orders for all remaining states by the end of August. LTD Broadband has no reason to believe that any state will dismiss or deny its ETC application.

Discussion

I. THERE IS GOOD CAUSE FOR GRANT OF THE REQUESTED WAIVER

The Commission may waive a rule for good cause shown.¹¹ Waiver is appropriate where the “particular facts would make strict compliance inconsistent with the public

¹¹ See 47 C.F.R. § 1.3.

interest.”¹² The Commission may grant a waiver of its rules where the requested relief would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest than strict adherence to the general rule.¹³ The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁴

First, in several states, LTD Broadband filed its ETC application within 30 days from the release of the *Auction Closing Public Notice*. In others, LTD Broadband filed within 30 days of the June 7 deadline consistent with state commission guidelines. In other states, LTD Broadband made the decision to defer filing for strategic reasons. The Commission has recognized that some state commissions might be unable to approve ETC status within 180 days (by June 7, 2021) of the *Auction Closing Public Notice*. The Commission stated that a waiver of the 180-day deadline would be appropriate if an applicant has an ETC application pending with a state commission but a vote to approve the application would not occur until after June 7, 2021, and “will presume that an entity acted in good faith if the entity files its ETC application **within 30 days** of the release of this Public Notice.”¹⁵ That is the case here in a number of states – LTD Broadband filed its ETC application within 30 days of the *Auction Closing Public Notice*, but the state commissions have not finalized approval (e.g., South Dakota). In other states (e.g., California and Oklahoma), even if LTD Broadband had filed its ETC application within 30 days of the *Auction Closing Public Notice*, it would be in the same position, along with other long-form applicants that also have sought waiver.

¹² See *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

¹³ See generally *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (“*WAIT Radio*”).

¹⁴ See *id.* at 1159; *Northeast Cellular* at 1166.

¹⁵ *Auction Closing Public Notice* at 13901 ¶ 37 (emphasis in original).

Second, in many cases the inability of LTD Broadband to obtain ETC status by the June 7 deadline is beyond LTD Broadband's control. LTD Broadband has faced intervention and discovery requests from state commission staff and intervenors, and has responded in every case. LTD Broadband will continue to diligently respond to all discovery and informational requests in an effort to expedite approvals in the remaining states.

The circumstances described above fall squarely within the "good faith" basis described in the *Auction Closing Public Notice*. Commissions in seven states have issued orders approving LTD Broadband as an ETC, and there is every reason to believe that the remaining states will follow suit. When LTD Broadband is designated as an ETC in the remaining states, it will promptly upload the order, census blocks and certification to its long-form application. There thus is good cause for the Bureau to waive Section 54.805(b)(5).

II. GRANT OF A WAIVER WOULD BE IN THE PUBLIC INTEREST AND CONSISTENT WITH COMMISSION PRACTICE

Extending the deadline for LTD Broadband to obtain and submit proof of its ETC designation is warranted because it serves the public interest by preventing LTD Broadband from relinquishing the opportunity to obtain RDOF support. The policy goal for the RDOF program is to support the deployment of broadband and voice services as expeditiously as possible to unserved and underserved areas. LTD Broadband is committed to its deployment obligations and is working with Commission staff to finalize its long-form application. Denying waiver of Section 54.805(b)(5) would delay the deployment of voice and broadband service to more than 500,000 rural locations, a draconian result that would be inconsistent with the public interest and Commission practice.

In the CAF program, the Bureau consistently waived the ETC certification deadline, determining that the benefits of additional time outweighed strict compliance with the deadline.

For example, in determining that it was ready to authorize Wisper ISP, Inc. (“Wisper”) for support, the Bureau, over the objection of a third party, stated that “[e]ven though Wisper did not file its ETC petition within the 30-day time-frame, we find Wisper’s delay does not rise to the level of lack of good faith that should result in its default.”¹⁶ The Bureau cited “the totality of the circumstances” and found that “Wisper’s late-filed ETC designation did not delay the Commission’s long-form application review process or the provision of voice and broadband services to consumers living in the areas where Wisper was awarded support.”¹⁷

Likewise, the Bureau granted a waiver of the ETC certification deadline to Plains Internet, LLC (“Plains Internet”), a CAF auction winner that filed its ETC application after the 30-day period following the auction closing public notice. Plains Internet demonstrated that the basis for its filing on that date was a lack of understanding that the state had ETC jurisdiction, circumstances similar to those present here. The Bureau made clear that “Plains Internet acted diligently in attempting to obtain its ETC designation prior to the deadline” and “[t]he late-filing of this ETC application did not delay the Commission’s long-form application review process or the provision of voice and broadband services to consumers living in the areas where the long-form applicant was awarded support.”¹⁸

The Bureau should make the same finding here, especially since LTD Broadband filed within the 30-day period in a number of states and Commission staff has not completed review of its long-form application. The “good faith” standard is unchanged, and the Commission has not signaled any intent to change its policy of granting waivers of the ETC designation deadline.

¹⁶ *Connect America Fund Phase II Auction Support for 2,121 Winning Bids Ready to Authorize*, Public Notice, 34 FCC Rcd 12384, 12385 (WCB 2019).

¹⁷ *Id.* at 12386.

¹⁸ *Connect America Fund Phase II Auction Support for 611 Winning Bids Ready to be Authorized*, Public Notice, 34 FCC Rcd 4648, 4649 (WCB 2019) (citation omitted).

LTD Broadband is working diligently to meet all Commission and state commission deadlines associated with its long-form application in an effort to gain ETC designations in the remaining states as soon as possible. Further, Commission staff has not completed its review of LTD Broadband's long-form application. In these circumstances, it would be consistent with the public interest and past practice for the Bureau to grant of the requested waiver.

LTD Broadband will use RDOF support to deploy voice and Gigabit broadband facilities and services to more than 500,000 residential and business locations in rural and remote areas of the country that currently lack adequate service. A brief delay in receiving ETC designation from the remaining state commissions should not undermine the benefits LTD Broadband intends to provide.

Conclusion

For the foregoing reasons, LTD Broadband respectfully requests the Bureau grant this Petition and waive Section 54.804(b)(5) as it relates to the June 7, 2021 deadline by which LTD

Broadband is required to show proof of ETC designation from the states where it is has not yet received ETC approval.

Respectfully submitted,

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Proceeding:	20-34, 10-90, 19-126
Confirmation #:	20210607058879502
Submitted:	Jun 7, 2021 6:14:36 PM
Status:	RECEIVED
Name(s) of Filer(s)	LTD Broadband, LLC
Law Firm(s)	Lerman Senter PLLC, Law Offices of Kristopher Twomey
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Type of Filing	PETITION FOR WAIVER
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Report Number	
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STATE OF KANSAS)
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COUNTY OF SHAWNEE)

VERIFICATION

I, Glenda Cafer, verify under penalty of perjury that I have caused the foregoing pleading to be prepared; that I have read and reviewed the same; and that the contents thereof are true and correct to the best of my information, knowledge, and belief.

/s/ Glenda Cafer

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing pleading was electronically served this 9th day of June, 2021 to:

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