

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LTD BROADBAND, LLC, Petitioner, v. IOWA UTILITIES BOARD, A DIVISION OF THE DEPARTMENT OF COMMERCE, STATE OF IOWA, Respondent.	Case No. PETITION FOR JUDICIAL REVIEW
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LTD Broadband LLC (“LTD”) is a broadband provider that has been in existence for over a decade. LTD owns and operates over 2,500 communications towers in Iowa, Minnesota, Nebraska, South Dakota, North Dakota, Tennessee and Wisconsin, serving over 18,000 customers (and growing). In 2019, the Iowa Utilities Board (“IUB” or “Board”) designated LTD as an “Eligible Telecommunications Carrier” (“ETC”) for receipt of federal funds to support development of rural and high-cost services, finding that LTD had the requisite “technical, managerial, and financial” capabilities, and that LTD’s designation as an ETC was in the public interest.

In 2020, the Federal Communications Commission (“FCC”) implemented a new program designed to improve rural broadband availability – the Rural Digital Opportunity Fund (“RDOF”). Following a reverse auction for support to deploy voice and broadband service to designated unserved areas of the country, the FCC announced that LTD was the winning bidder for more than \$23 million in federal funding to help bring new broadband service to a substantial portion of Iowa. Funding cannot be authorized, however, until LTD receives the state grant of the expansion of LTD’s existing ETC designation to cover the service territory for the RDOF areas, which is necessary for final FCC approval.

LTD filed a timely and substantially complete application to expand its ETC designation, and promptly responded to IUB staff follow-up questions and requests for additional information. Nonetheless, the Board first delayed, and ultimately in a final order of November 5, 2021, improperly denied LTD's ETC expansion application. The delay and denial of ETC expansion means more than \$23,000,000 in federal funding that LTD would have used to deploy broadband service to rural Iowans cannot be authorized to LTD by the FCC. Accordingly, LTD seeks judicial review pursuant to Iowa Code § 17A.19 of the Board's action in IUB Docket ETA.2019-0001.

PARTIES AND VENUE

1. LTD Broadband LLC is incorporated in Nevada, and is authorized to conduct business in Iowa.
2. The Iowa Utilities Board is an administrative agency of the State of Iowa, and part of the Iowa Department of Commerce. It is the agency charged with regulation of certain defined utilities in Iowa, and is an Agency for purposes of the Iowa Administrative Procedures Act. *See* Iowa Code § 17.2(1).
3. Venue is proper in Polk County pursuant to Iowa Code § 17A.19(2), which establishes venue in Polk County by statute. Moreover, the decisions and actions complained of occurred at the Board's office in Polk County.

FACTS

4. Both the federal government and the state of Iowa have, as a policy, the promotion of "universal service" – the ability of all persons to access and afford reliable communications services. Such policies increasingly extend to services for both voice and broadband.

5. To further such universal service policies, Congress, and ultimately the FCC, have provided for support to providers who agree to build networks and provide service in areas with low population densities and, as a result, high costs of service. Collectively such programs are referred to as FCC's "High Cost Programs." Two such programs of particular relevance here are the Connect America Fund Phase II ("CAF II") and the Rural Digital Opportunity Fund ("RDOF").

6. Under federal law for the High Cost Programs, certain aspects of administration are delegated to state commissions like the Board – in particular determining the initial qualification for such programs for providers requesting participation in specifically identified areas, and making annual certifications that funds from such programs are being used solely for their intended purposes.

7. In Iowa, the Board has adopted administrative rules for its role in the federal High Cost Programs. These rules are at 199 Iowa Administrative Code (IAC) chapter 39.

8. The rules for initial designation as an ETC are extensive, and require submission of evidence sufficient for the Board to determine a provider has the technical, financial and managerial capability to fulfill its service obligations. *See* 199 IAC 39.3(1) and (2).

9. On January 22, 2019, LTD filed an application and supporting materials with the Board for designation as an ETC as a predicate for FCC authorization of support to LTD in the CAF II program.

10. On February 20, 2019, just 28 days later, the Board granted LTD's application and designated it as an ETC in the census blocks it requested, finding that LTD had demonstrated the technical, financial and managerial capabilities, met the requirements of the law, and that designating LTD was in the public interest. *Attachment A*.

11. In 2020, the FCC implemented the new RDOF program. The FCC determined LTD was eligible for participation in the reverse auction to allocate support to additional designated unserved areas the FCC had identified. LTD was the winning bidder for an additional 12,916 locations in Iowa, with total support of \$23,184,786.30 over a ten-year period. The award is contingent on LTD obtaining state ETC designation for the additional census blocks containing those locations.

12. Because LTD was already an ETC in Iowa, under the Iowa rules all that was required was an amendment to LTD's ETC designation to include the RDOF census blocks. While the rules describing an *initial* application include more than three pages of requirements, the *entire* rule on amending territory provides:

Amendments other than transactions. Where a carrier that has been designated by the board as an ETC intends to serve as an ETC in a new service area for the purpose of receiving support from the CAF Phase II auction or for other similar purposes, the carrier shall file a request to amend its designation with a notice of expansion at least 30 days in advance of the expansion and shall certify that the carrier intends to amend its designation to serve as an ETC in the expanded service area.

199 IAC 39.3(3)(i).

13. On May 7, 2021, LTD filed its Request to Amend Eligible Telecommunication Carrier Designation to add the additional census blocks. In that amendment, which was filed 30 days before the proposed date of the expansion, LTD certified that it intended to amend its designation and serve as an ETC in the expanded service areas. ***Attachment B.***

14. LTD did everything required by law to amend its ETC designation. Moreover, LTD provided considerable additional information, re-asserting the qualifications for the initial designation, which was not required by law.

15. On May 13, 2021, Board staff issued a letter requesting clarifications and additional information. LTD provided responses on May 18 and May 19.

16. On June 4, 2021, Board staff again requested additional information. On July 6, LTD timely responded, addressing the Board's requests.

17. The initial FCC deadline, subject to waiver, for obtaining state authority was June 7, 2021. On that date, LTD filed a request for waiver with the FCC, seeking additional time to obtain an order from the Board approving the expansion of LTD's ETC designation in Iowa and other states. The waiver request pointed out that seven other states had approved LTD's application for ETC designation, and an eighth followed a few days later.

18. Although LTD provided all requested information in a timely manner and there were no further requests for information, the Board did not act on LTD's amendment despite its awareness of the June 7 FCC deadline. Not only did the Board not act on June 7, it didn't act in July after the last information requested was provided. The Board didn't act in August. The Board didn't act in September. And the Board still didn't act in October. And on October 20, 2021, the FCC denied LTD's request for a waiver of the June 7 deadline for its Iowa authorization.¹ By comparison, the initial designation of LTD in 2019 – which, under Iowa law, is designed to be a more thorough review than a mere expansion amendment – took 28 days.

19. On November 2, 2021, with its clock running to seek reconsideration of the FCC order, LTD filed a Request for Expedited Ruling from the Board.

20. On November 5, 2021, the Board issued an Order constituting final agency action denying LTD's requested amendment to its ETC authority. The Board's Order noted issues with the timing of LTD's request, some belated compliance filings, and the need to seek additional

¹ On November 19, 2021, LTD timely filed a request for reconsideration of that FCC decision.

information – but the Board did not and could not identify any elements of the amendment rule that were not satisfied at the time of the denial. Moreover, the Board did not and could not deny that the request was made 30 days prior to the proposed effective date, compliant with the administrative rule. The Board made no finding on the affirmative merits of LTD’s ETC amendment. *Attachment C*.

21. Notably, LTD’s ETC amendment application was treated differently than those of other applicants. Not only did the Board take much longer to rule on LTD’s request than any other applicant, it held LTD to a different standard than the one it applied for similarly situated ETC applicants. For example, in IUB Docket ETA-2021-0002, Miles Communications filed its application for ETC designation to allow it to participate in RDOF on May 4, 2021 – just three days before LTD. Miles’ application did not include terms and conditions for its supported services, which the Board staff requested by letter just as it had requested additional information from LTD. Despite the similar timing and the perceived need for additional information, the Board granted Miles’ application in 31 days, on June 4, 2021, in advance of the FCC’s June 7 deadline – and allowed Miles to comply with the staff information request *after* approval (such compliance did not occur for over a month.)

22. Similarly, Guthrie Communications took the position that its RDOF award was for the same area in which it was already designated, so it did not file an application to amend its existing ETC designation. By letter from Board staff on May 30, 2021, the Board noted that its prior designation was by described service territory; RDOF was awarded in census blocks. The Board requested Guthrie to file a list of census blocks in its Miscellaneous docket within five days. There is no indication in that docket that such a list was filed. Guthrie then challenged the

Board's invoices for its work on the RDOF issue. There is no indication the Board ever took any steps to prevent Guthrie from being considered authorized for RDOF funds like it did to LTD.

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22. LTD incorporates paragraphs 1-21.

23. The Board's denial of LTD's request to amend its ETC territory was contrary to any standards authorized by statute or rule for such amendments. LTD met the only requirements made known for amendments, and the Board did not cite any substantive issues that had not already been resolved at the time of denial. *See* Iowa Code §17A.19(10)(b), (c), (g), (m), (n).

24. The Board's delay and denial of LTD's request to amend its ETC territory was arbitrary and capricious, and inconsistent with how the Board treated applicants making similar application. *See* Iowa Code §17A.19(10)(g), (h), (m), (n).

25. The Board's delay and denial failed to take into account the magnitude of the loss of potential investment in Iowa's underserved communities and the public policy interests in timely action to facilitate the implementation of RDOF and the FCC's decision to award LTD additional territories. *See* Iowa Code §17A.19(10)(d), (i), (j), (k), (m), (n).

26. The Board's apparent application of standards closer to those for an initial ETC application misinterprets the Board's own rules, and used standards that were wholly subjective in violation of LTD's due process. Moreover, if the FCC or the Iowa Legislature allowed and intended for the Board to use unclear, subjective standards without notice, such delegation of authority is an unconstitutional delegation beyond the scope of an administrative agency. *See* Iowa Code §17A.19(10)(a), (b), (d), (g), (i), (n).

THEREFORE, LTD Broadband LLC respectfully requests that the Court reverse the decision of the Board, and enter such other relief as it finds proper on the facts and law before it.

Filed this 3rd day of December, 2021.

Respectfully submitted,

/s/ Bret A. Dublinske

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