

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:

LTD BROADBAND, LLC

DOCKET NO. ETA-2019-0001

**ORDER DENYING REQUEST TO AMEND ELIGIBLE TELECOMMUNICATIONS
CARRIER DESIGNATION**

PROCEDURAL BACKGROUND

In 2020, the Federal Communications Commission (FCC) established the Rural Digital Opportunity Fund (RDOF) to advance its established mission to promote universal access to communications services. The FCC structured eligibility for RDOF as a multiphase evaluation in which the FCC would presumptively award support following a competitive reverse auction to applicants who met the minimum qualifications to bid and commit to deploying and maintaining voice and broadband service of at least 25 megabits per second (Mbps) download and 3 Mbps upload in identified high-cost areas.

On December 7, 2020, the FCC issued Public Notice DA 20-1422 (Public Notice) to announce the results of the competitive bidding and lay out the remaining eligibility requirements for winning bidders to secure the support presumptively awarded. One applicable requirement is for winning bidders to secure an eligible telecommunications carrier (ETC) designation covering the census blocks awarded through RDOF. The FCC did not require a prospective bidder to obtain the designation prior to the auction

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that would provisionally award specific census blocks. The program guidance released in early 2020 advised that only winning bidders would be required to obtain ETC designation according to the respective state criteria for any census blocks awarded. If a winning bidder did not have an existing ETC that covered all areas awarded support, it would need to seek a new or amended designation in the timeframe provided. The Public Notice included a list of winning bidders, by state, and detailed the deadlines to meet the remaining eligibility requirements. The Public Notice also established a waiver mechanism for winning bidders that may be unable to satisfy the documentation requirements concerning the ETC designation by the FCC's deadline of June 7, 2021, providing, "In the event a long-form applicant determines that it will be unable to obtain the necessary ETC designations within 180 days [of this Public Notice], it should upload a petition for waiver of the deadline to its FCC Form 683 and in AU Docket No. 20-34." Given the Utilities Board's (Board) rule at 199 Iowa Administrative Code (IAC) 39.3(3)(i), which requires 30 days' advance notice of the intent to amend, the FCC's deadline for documentation established May 7, 2021, as the last day for a winning bidder in Iowa to apply for amendment of an existing designation.

On May 7, 2021, LTD Broadband, LLC (LTD), filed with the Board an application and notice to amend its ETC designation in Docket No. ETA-2019-0001, pursuant to Board rule 199 IAC 39.3(3)(i). LTD seeks to amend its ETC designation to include new locations in the state of Iowa where it was the winning bidder in the FCC's RDOF Phase I auction.

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LTD HISTORY AS AN ETC

On January 22, 2019, LTD filed with the Board an application for a new ETC designation, identified as Docket No. ETA-2019-0001. That request was for the purpose of receiving support from a similar federal Universal Service Fund (USF) program, the Connect America Fund II (CAF II), in which it was awarded support from the CAF II Phase II Auction to deploy broadband and voice communications, as well as Lifeline support. In the January 22, 2019 application, LTD explained it was seeking ETC designation for the census blocks for which it was allocated funds through the CAF II auction. In response to a request from Board staff (Staff), LTD provided additional information on February 1, 2019, to complete its application. On February 20, 2019, the Board issued an order granting LTD's request for a new ETC designation, based on the finding that LTD had substantially complied with the Board's rules governing designation of ETCs. The Board defined LTD's service area as the census blocks awarded to LTD in the CAF II auction. In the February 20, 2019 order, the Board set out a series of conditions required to retain that designation. As a new carrier in Iowa, LTD was directed by the Board to file a telecommunications service provider registration prior to offering service in Iowa and to comply with the reporting and assessment obligations set forth in Iowa Code and the Board's rules.

On March 23, 2019, LTD filed an annual report as a local exchange carrier; however, LTD did not file the initial registration or any subsequent annual reports as directed by the Board and required by rule until completing a company profile in the Board's new electronic database, IUB 24/7, on May 18, 2021. Upon creation of the company profile in IUB 24/7, LTD filed the outstanding annual report due April 1, 2021,

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covering operations during calendar year 2020. The annual report covering operations during calendar year 2019, which would have been made in the Board's electronic filing system in 2020 under Docket No. M-4612, is still outstanding as of the date of this order.

LTD made its first report to the Dual Party Relay Service (DPRS) program on October 4, 2019, and reported zero revenue-producing telephone lines; however, LTD has not consistently filed timely DPRS reports from that point forward and was past due on the payment of its first assessment until July 7, 2021, when it corrected a series of past reports and paid the corresponding amounts due following an inquiry from the Board.

CURRENT APPLICATION TO AMEND DESIGNATION

In its May 7, 2021 filing with the Board, identified as "Application to Amend Eligible Telecommunications Carrier Designation" (Application), LTD acknowledges that, pursuant to the FCC's rules for the RDOF auction, LTD is required to amend its high-cost ETC designation to include the additional areas covered by its successful RDOF bids, but asserts that 30 days' advance notice is the extent of the Board's requirements to amend found at 199 IAC 39.3(3)(i). In the filing, LTD asserts: "[w]hile the Board's rule establishes no particular requirements other than notice 30 days in advance, and while the Board found LTD Broadband qualified for designation just two years ago, LTD Broadband nonetheless briefly restates the following commitments and information in support of its request." LTD further asserts in its Application that it "has all necessary regulatory authority, having been previously designed [sic] as an ETC by this Board and having been awarded support under the FCC's RDOF." LTD concludes

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the Application with a request for an amended designation before the June 7, 2021 deadline set by the FCC, stating in support:

LTD Broadband has gone above and beyond the requirement for a request for amendment to a designation by providing information on the underlying criteria for designation. LTD Broadband has satisfied the FCC of the merits of its Application for support to serve the RDOF CBGs, and the Board just two years ago granted LTD Broadband's full Application for designation as an ETC.

On May 13, 2021, after determining LTD's Application was incomplete, Staff filed a request for additional information, seeking an explanation and information relating to the criteria found in the Board's rules at 199 IAC 39.3(2), specifically lettered subparagraphs "b," "d," "g," and "n." The provision at 199 IAC 39.3(2)(b), concerning a statement of financial and technical qualification to provide the supported service, was deemed insufficient given omissions in the Application and several compliance issues related to its current designation that were outstanding at the time of filing the Application. Specifically, LTD had not complied with the Board's February 22, 2019 order, as LTD had not yet filed a registration as a telecommunications service provider, was past due on its DPRS assessment, and had not yet filed an annual report with the Board for reporting years 2019 and 2020.

On May 18, 2021, LTD filed additional information in Docket No. ETA-2019-0001 and created a company profile in IUB 24/7, which allowed LTD to complete the delinquent registration and file the overdue annual report that was due on April 1, 2021, covering operations in 2020.

On June 4, 2021, the Board determined that LTD's response was insufficient and thus would prevent the Board from rendering a decision until LTD substantially

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completed the Application by addressing the outstanding compliance obligations that cast doubt on its ability to undertake the additional responsibilities. Accordingly, also on June 4, 2021, the Board issued an order in Docket No. ETA-2019-0001 seeking additional information concerning the omissions in the Application and requiring LTD to address the remaining outstanding compliance obligations. The Board provided 30 days for LTD to reply, aware that the FCC had established a waiver mechanism that allowed winning bidders to request an extension of time to obtain the designation to give state public utility commissions the opportunity to evaluate the merits of a complete Application. Due to the Independence Day holiday, the deadline to reply carried over to July 7, 2021.

On June 7, 2021, LTD filed a petition for limited waiver with the FCC, seeking additional time beyond the FCC's June 7, 2021 deadline to upload documentation of ETC designation for certain states in which it was awarded census blocks for RDOF. Iowa is included in the list of states subject to the waiver petition. In its waiver petition, LTD states the following to the FCC in reference to its designation in Iowa and misstates Iowa's regulatory requirements:

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

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provide the requested information well within the 30-day time frame, and expects approval of its ETC amendment shortly thereafter.¹

On July 6, 2021, LTD filed a reply to the Board's June 4, 2021 order, addressing the remaining aspects of the Application. As part of that reply, LTD informed the Board that it had corrected a series of reports to the Dual Party Relay Service program.

On July 26, 2021, the FCC contacted LTD and 196 other carriers by letter regarding certain census blocks presumptively awarded for RDOF support to recommend the carriers assess whether those census blocks should be relinquished to serve the public interest of avoiding duplication. Included in that list were census blocks in Iowa. On August 16, 2021, LTD replied to the FCC with a list of 118 census blocks in Iowa for which it no longer intends to pursue support. The list of census blocks in play is relevant for purposes of an Application to amend an ETC designation as the Board sets the service area. The FCC indicates it will approve defaults via Public Notice, which had not been issued as of the date of this order.

On October 20, 2021, the FCC issued an order (Waiver Order) denying LTD's June 7, 2021 request for waiver of the deadline to submit ETC documentation from three states, including the waiver request related to this Application concerning census blocks in Iowa.² In the Waiver Order, the FCC concludes that LTD did not file its petition for designation in Iowa within the FCC's 30-day "good faith presumption" window, did not demonstrate that good cause was shown to justify the FCC's waiver of its ETC

¹ See Petition for Limited Waiver of LTD Broadband LLC, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (filed June 7, 2021). Available at: <https://ecfsapi.fcc.gov/file/106070476913071/LTD%20Broadband%20ETC%20Waiver%20Request.pdf>.

² See In the Matter of the Rural Digital Opportunity Fund Auction (Auction 904) Rural Digital Opportunity Fund, No. AU Docket No. 20-34, WC Docket No. 19-126 2021 WL 4941602 (OHMSV Oct. 20, 2021). Available at: <https://docs.fcc.gov/public/attachments/DA-21-1311A1.pdf>.

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documentation deadline and that it's the sole responsibility of the applicant to understand the ETC designation rules in each state. The Waiver Order states:

LTD explains that it did not file its ETC designation application in Nebraska until April 28 and in Iowa and North Dakota until May 7, approximately five months after the release of the Auction 904 Closing Public Notice. LTD contends that it waited until those dates to file in these states due to its understanding that each state had a 30-day ETC approval process and that it therefore believed it would obtain ETC designation in all three states by the Commission's June 7 deadline. LTD offers no explanation for why it did not file in these states sooner, or why waiting until the last possible moment to file (even if its assumptions about a 30 day approval process were correct) was a choice warranting waiver.³

The FCC concludes by indicating it will release a public notice "in the near future" finding LTD in default of its bids in Iowa. The Board understands this action by the FCC may render the Application before the Board moot; however, should LTD decide to petition the FCC for reconsideration, the Board's evaluation of the Application on the merits would remain relevant.

No objections have been filed in this docket.

LEGAL STANDARDS

Federal law establishes certain requirements in 47 U.S.C. § 214(e) that common carriers must satisfy in order to receive federal universal service support; 47 U.S.C. § 214(e)(2) places the duty to designate carriers on state commissions, and Iowa Code § 476.95B provides: "The board may exercise any powers reserved or delegated to the state by the federal Telecommunications Act of 1996 or any other federal law, rule, or order thereunder, and may hear and resolve any dispute arising thereunder . . ." The Board's subrule at 199 IAC 39.3(1) implements that authority and provides that, "if an applicant requests an expedited ruling from the board on an application to be

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designated as an ETC or on an amendment to an existing ETC designation, the applicant shall specify why an expedited process is necessary and why an expedited review would not be contrary to the public interest.” Board paragraph 199 IAC 39.3(3)(i) governs amendments to existing ETC designations and includes a minimum notice requirement that the carrier provide notice of the expansion 30 days in advance and certify that the carrier intends to amend its designation to serve as an ETC in the expanded area. Finally, Board subrule 39.3(2) sets out the Board’s application criteria to be designated as an ETC to qualify for support from the federal USF in a particular geographic service area.

In order to receive support from RDOF for the new locations described in its Application, LTD must amend its ETC designation to include the new locations. LTD filed the Application pursuant to 47 U.S.C. §§ 214(e)(2) and (3), requesting that the Board amend its existing designation as an ETC, to be eligible under 47 CFR § 54.201(d) to receive high-cost federal USF support under the FCC’s new RDOF program. Participation in RDOF requires adherence to deployment obligations, service milestones, reporting requirements, and performance targets to remain eligible. While the FCC assumes the primary role of overall program oversight, federal law at 47 CFR § 54.320(c) notes that noncompliance by a support recipient may subject the recipient to a variety of sanctions, including potential revocation of ETC designation. For those reasons, the Board also evaluates compliance history when reviewing Applications to amend for service to a new area that will be supported by public funds. The Application criteria provided in 199 IAC 39.3(2) apply uniformly to those seeking a new or amended ETC designation. As the Board’s previous approval was based primarily upon a

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certification of future compliance, a current review of compliance with 199 IAC 39.3(2) is also carried out to ensure LTD's continued eligibility for ETC designation. As part of that compliance review, the Board evaluates adherence with applicable rule and Code provisions, specifically 199 IAC 23.1(2) requiring the filing of an annual report; 199 IAC 39.7(3)(c) concerning the annual filing of affidavits from carriers seeking to continue receiving high-cost support; 199 IAC 39.3(2)(m) requiring ETCs to contribute to DPRS; and Iowa Code § 476.95A, which requires registration as a telecommunications service provider, as defined in Iowa Code § 476.103, prior to offering service in Iowa. The requirement to register is a standard for all carriers that fit that definition, not only those that take on the additional responsibilities that come with designation as an ETC.

BOARD DISCUSSION

The Board begins by noting the incongruence between LTD's assertion that it has all regulatory approvals needed and its filing of an Application requesting approval through Board action. It is not clear to the Board why LTD would need a waiver from the FCC if LTD had all required regulatory approvals at the time it filed notice of intent to amend with the Board. If that were the case, there would be no need for an Application to the Board for an amended designation, no need to petition the FCC for a waiver of the deadline to evidence the adequacy of its designation, and no need to wait for this order determining the outcome of the request. The Board is left to conclude that either LTD significantly misunderstands its regulatory requirements or is attempting to mislead the agencies charged with evaluating eligibility, with both scenarios casting serious doubt on the appropriateness of granting the request to amend. Therefore, despite

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LTD's assertions to the Board and FCC concerning the legal standards that apply, the Board reviews this Application using the Board's interpretation of chapter 39 of its rules. Using that standard, the Board concludes that both a notice of intent and an application are required to amend an ETC designation, thus LTD's filing will be treated as an application pursuant to 199 IAC 39.3(2).

NOTICE OF INTENT TO AMEND ETC DESIGNATION

LTD's filing on May 7, 2021, provided the Board with notice 30 days in advance of its intent to expand service as an ETC in new service areas for the purpose of receiving support from the RDOF Phase I auction. Although the Board's rules require the request to amend and notice of expansion to be filed at least 30 days in advance, the Board notes carriers are permitted to file with the Board as soon as the FCC notifies carriers of their presumptive award. The Board's rules would not preclude an Application prior to a presumptive award if later augmented to provide the specific census blocks to identify the geographic service area for the expanded designation. Accordingly, the Board does not consider filing the notice and an incomplete Application on the last day to "go above and beyond." The Board finds that while LTD satisfied the notice requirement of 199 IAC 39.3(3)(i), the Application required by that rule was incomplete until July 7, 2021, when the Application criteria specified in 199 IAC 39.3(2) were substantially fulfilled.

APPLICATION TO AMEND ETC DESIGNATION

Given the omissions in the Application at the time of filing on May 7, 2021, and unaddressed in LTD's May 18, 2021 reply to Staff, the Board was not in a position to

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render a decision on the Application until it was made complete by LTD on July 7, 2021. Upon receipt of a complete Application, the Board evaluated whether the information submitted by LTD in this docket demonstrates LTD's capability to successfully assume the additional responsibilities of an ETC in the 3,798 census blocks for which it was the winning bidder in the RDOF Phase I auction.

The ETC designation is intended to signal that a carrier can carry out the supported services, manage the additional regulatory responsibilities in place to safeguard consumers and public funds, and achieve the policy goals intended. The Board has granted requests for a new or amended designation even when an applicant's initial filing is incomplete, if the omissions are adequately addressed in the time frame allotted. In this docket in 2019, the Board granted LTD's request for a new designation after finding LTD's application was made substantially complete following the filing of additional information. Following suit with that approach, the Board notes that nearly every other applicant related to RDOF had a few omissions initially, but there is no one criterion that will automatically disqualify an applicant. Rather, completed ETC applications are considered in the context of the applicant's history of compliance, to estimate the potential for future success. Where an Application is made complete and the compliance history demonstrates candor to the regulatory body, including prompt corrective action, the Board is inclined to approve a request to expand.

Against that backdrop, LTD's Application stands out for many reasons. It was filed on the last day, was obviously incomplete when filed, and had the tone of a courtesy filing, yet even LTD's appeal for expedited review from the Board was insufficient. LTD requested the Board act on the Application before June 7, 2021, but

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failed to articulate why an expedited process was necessary and why an expedited review would not be contrary to the public interest as expressly required in the Board's subrule at 199 IAC 39.3(1). The Board further notes that LTD was essentially asking to waive the Board's 30-day notice requirement, not merely expedite a proceeding that otherwise fell within the timelines set forth in rule. The Board's rule at 199 IAC 1.3 governs waivers of rules and provides: "In response to a request, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence," that the four factors defined in the rule to support a waiver are met. While the Board will not decide a waiver request that wasn't expressly made, the Board notes it still has discretion to decline a properly made waiver request upon consideration of "all relevant factors."

Beyond the procedural flaws in LTD's Application, the company's responses to Board inquiries in Docket No. M-4612 and this docket illustrate that LTD has routinely submitted regulatory filings with obvious errors, if filings were submitted at all. The Board strives to minimize the administrative burden on the entities it regulates. The timely filing of these types of reports and the accuracy of the information communicated therein is especially important in a self-reporting environment. To the extent that the Board and FCC are regulatory bodies that assist with carrying out public policy goals by the policymakers that enact them, the Board is compelled to note that these regulatory filings serve an important regulatory purpose and are not merely paperwork.

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Both LTD's application for the original designation and the present one to amend contain a certification that LTD will contribute to the DPRS, as required by the Board's rules at 199 IAC 39.3(2)(m). LTD's first report to the DPRS program was made timely and covered 1QFY20 (July 1, 2019, through September 30, 2019), which was approximately six months after the Board granted the original designation. From that point forward, however, LTD generally reported timely, but appears to have filed inaccurate information based on the corrections made on July 7, 2021, after prompting by the Board. At the time of each filing, there was no basis to presume that the self-reports were inaccurate. For the quarter covering January 1 through March 31, 2021, LTD reported revenue-producing lines and thus triggered an assessment that was due on April 30, 2021. As of June 4, 2021, LTD was past due on the payment of that assessment, even though it had filed this pending Application in which it made assurances to the Board that it was prepared to expand its regulatory and service obligations. It was not until the Board requested additional information concerning that history for consideration of the present Application that LTD corrected every report filed. The disconnect in LTD's assertions versus actions factored into the Board's request for additional information to make the current Application complete. The DPRS program exists to provide telephone accessibility to lowans who are deaf, hard of hearing, deaf-blind, or have difficulty speaking. The DPRS program is funded by the entities that generate revenue from telecommunications service lines and the Board carries out the administrative aspect of collecting that assessment to ease the burden on the carriers

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themselves. While the assessment amount overdue was small, there is no *de minimus* exception and the Board's facilitation of electronic reporting makes compliance with that provision straightforward for carriers. It is for this reason that the Board takes seriously LTD's history of inconsistent compliance with this provision, as the regulatory burden is minimal and the consequence of failing to uphold the obligation ETCs pledge to carry out impacts the rest of the industry, the Board, and most importantly, the lowans served by the program.

Pursuant to the Board's rules at 199 IAC 23.1(2) and 23.2(6), an annual report is required to be filed with the Board by April 1 of each year; the information provides the Board with current contact information and is required to determine the telecommunications service provider's share of an industry assessment to cover Board expenses. On March 23, 2019, LTD filed its first annual report in its company docket, Docket No. M-4612, in the Board's electronic filing system (EFS). In that annual report, LTD indicated it was a local exchange carrier. That report covered calendar year 2018 and was timely filed pursuant to the Board's February 20, 2019 order. That was the last annual report filed until pressed by the Board for purposes of this Application.

LTD's March 23, 2019 annual report characterized its operations as those of a local exchange carrier, which affirmed the Board's February 20, 2019 order granting designation and directing LTD to comply with Iowa Code § 476.95A by submitting a telecommunications service provider registration prior to offering service in Iowa. On May 18, 2021, following the inquiry from Staff, LTD finally created a company contact

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profile in IUB 24/7, where LTD again characterized its operations as those of a local exchange carrier, among other elections. Creation of that company contact profile afforded LTD with the current means to satisfy its outstanding obligation to register with the Board and file the overdue annual report due on April 1, 2021, to cover operations in 2020. LTD has yet to file the other outstanding delinquent annual report, which would cover operations in 2019, in the Board's EFS.

The Board's decision in this Application, however, is not based on that initial impression nor isolated acts of noncompliance. It is that inconsistent history of compliance, coupled with LTD's representations to the Board and FCC about that history for purposes of this Application, as well as the scale of the additional responsibility LTD seeks to take on, that the Board finds more concerning from a public interest standpoint. The record in this docket does not merit the expansion of a credential that signals to the public that LTD has evidenced the technical and financial capabilities required to carry out the public interest obligations of those entrusted with federal funds. LTD's responses and actions lack the candor that the Board would expect from a carrier seeking to evidence the expertise to take on this degree of expansion. The Board notes that a decision to deny expansion of the credential does not disturb LTD's current designation; however, the record developed may suggest a need for additional compliance monitoring of LTD's existing designation.

For the reasons stated above and supported by the record established in this docket, the Board will deny LTD's Application to Amend Eligible Telecommunications Carrier Designation filed on May 7, 2021. To ensure that the FCC has an accurate

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understanding of the ETC designation process in Iowa, the Board will file this order with the FCC.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The Application to Amend Eligible Telecommunications Carrier Designation filed by LTD Broadband, Inc., in Docket No. ETA-2019-0001 on May 7, 2021, and completed on July 6, 2021, is denied.
2. Notice of this order shall be sent to the Federal Communications Commission.

UTILITIES BOARD

Geri Huser Date: 2021.11.05
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Richard Lozier Date: 2021.11.05
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ATTEST:

Louis Vander Streek Louis Vander Streek
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Dated at Des Moines, Iowa, this 5th day of November, 2021.