

**DISTRICT OF COLUMBIA COURT OF APPEALS  
BOARD ON PROFESSIONAL RESPONSIBILITY**



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**In the Matter of** :  
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**KRISTOPHER E. TWOMEY,** :  
 **ESQUIRE,** :  
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 **Respondent,** :  
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**A Member of the Bar of the** :  
 **District of Columbia Court of Appeals.** :  
**Bar Number: 979338** :  
**Date of Admission: April 14, 2008** :  
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**Disciplinary Docket Nos. 2021-  
D198 & 2022-D119**

**SPECIFICATION OF CHARGES**

The disciplinary proceeding instituted by this petition is based upon conduct that violates the standards governing the practice of law in the District of Columbia as prescribed by D.C. Bar. R. X and XI, § 2(b). Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar. R. XI. Pursuant to D.C. Bar R. XI, § 1(a), jurisdiction is found because:

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on April 14, 2008, and assigned Bar number 979338. Respondent is also a member of the Massachusetts Bar.

The facts giving rise to the charges of misconduct are as follows:

2. At all relevant times herein, Respondent was a solo practitioner who maintained his law office in the District of Columbia.

3. In January 2020, the Federal Communications Commission established the Rural Digital Opportunity Fund (RDOF) to provide financial support to businesses for the construction and development of high-speed broadband networks in rural areas of the United States.

4. In June 2020, the FCC adopted bidding procedures for Phase I of the RDOF. Phase I included a reverse auction in which businesses competed against each other by committing to provide broadband services to unserved communities in exchange for various levels of financial support through the RDOF. Bidding for Phase I opened in October 2020 and concluded in November 2020. On December 7, 2020, the FCC announced 180 winning bidders for Phase I of the RDOF.

5. A winning bidder was required to submit a long-form application to the FCC for RDOF support, including documentation that it was an eligible telecommunication carrier (ETC) in each state for which it had won RDOF support.

6. The FCC required documentation of ETC designation to be filed by June 7, 2021. The FCC would consider waiving the deadline if the relevant state's proceeding to obtain that designation had not concluded by June 7, so long as a good faith effort had been made to obtain it in time.

***Count I – LTD Broadband  
Disciplinary Docket No. 2021-D198***

7. LTD Broadband LLC was a winning bidder in Phase I of the RDOF. Its bid covered rural areas in 15 states, including California, Nebraska, and North Dakota. The FCC assigned LTD more than \$1.3 billion in support over 10 years.

8. In January 2021, LTD retained Respondent to assist it with applying for ETC designation in various states for which it had won RDOF support, including California, Nebraska, and North Dakota.

9. In March 2021, LTD retained Stephen Coran, Esquire, an attorney practicing in Washington, D.C., to assist it with its long-form application to the FCC.

10. Respondent, Mr. Coran, and LTD's CEO Corey Hauer held status calls approximately every week to discuss the ETC designation proceedings in the various states. They also maintained a shared document tracking the status of those proceedings.

11. Respondent entered information in the shared tracking document indicating that he had filed an ETC application in California on April 26, 2021, in Nebraska on April 28, 2021, and in North Dakota on May 6, 2021.

12. LTD was not on course to obtain ETC designation in several states by the deadline of June 7, 2021. Using information contained in the shared tracking document, Mr. Coran began drafting a Petition for Limited Waiver in early June to

ask the FCC to waive the deadline. The Petition averred that good cause existed to waive the deadline because, *inter alia*, LTD had filed ETC designation applications in California, Nebraska, and North Dakota, but that those states' proceedings had not concluded.

13. Both Respondent and Mr. Coran signed the Petition after it was finalized. Mr. Coran filed it with the FCC on June 7, 2021. As set forth in more detail below, the Petition contained statements which Respondent knew to be false at the time it was filed. Mr. Coran believed these statements were true at the time based on representations made to him by Respondent. Respondent knew that Mr. Coran was relying on him to provide truthful information. He also knew that Mr. Coran was unwittingly using false information to seek a waiver of the June 7 deadline.

#### California ETC Application

14. On June 4, 2021, Mr. Coran emailed Respondent after reading in *Communications Daily*, a news source for communications regulation, that California had not yet received an ETC application from LTD. Respondent replied, copying Mr. Hauer, by stating that "the spokesperson is misinformed" and attaching a filing receipt purporting to show that he filed LTD's application with the California Public Utilities Commission (CPUC) on April 26, 2021. This representation was

false. In fact, Respondent electronically filed LTD's application on June 3, 2021, and he altered the filing receipt to show a filing date of April 26.

15. On June 5, 2021, Mr. Coran emailed Respondent the draft Petition for Limited Waiver. The draft stated that "LTD Broadband filed for ETC designation [in California] on April 26, 2021" and it cited "Docket No. A2106002." Mr. Coran believed at the time that these statements were true based on information he obtained from Respondent, but Respondent knew they were false. Respondent filed LTD's application on June 3, and he made up the docket number. Although he reviewed and revised the draft Petition, Respondent did not correct the false filing date or false docket number.

16. On June 7, 2021, Mr. Coran emailed Respondent a final version of the Petition for his review and spoke with Respondent by phone. Again, Respondent did not correct the false filing date or false docket number. Mr. Coran filed the Petition with the FCC that day.

17. On June 8, 2021, the CPUC contacted Mr. Coran and questioned him regarding the filing date and docket number alleged in the Petition. Mr. Coran represented that Respondent had filed the ETC application as stated in the Petition, and he emailed a copy of the false filing receipt to the CPUC's Assistant General Counsel.

18. On June 22, 2021, following an investigation during which it questioned Respondent, the CPUC filed a letter with the FCC informing it that the Petition “misrepresents the facts” regarding LTD’s application for ETC designation in California. Specifically, the CPUC wrote that the application “actually was filed with the CPUC on June 3, 2021, after close of business, which meant that it was entered in the CPUC’s document filing system on June 4th.” The CPUC also wrote that the application “to date has not been assigned a docket number because the filing still has not been processed.”

19. On June 23, 2021, Mr. Coran filed a supplement to the Petition. Attached to the supplement was a sworn declaration from Respondent. Respondent admitted that he filed LTD’s application with the CPUC on June 3, that the CPUC had not yet assigned a docket number to the application, and that he made up the docket number cited in the Petition. Respondent admitted that he told Mr. Coran, Mr. Hauer, and the CPUC for the first time on June 21, 2021, that he “had misrepresented the application filing date, made up the docket number and created the [April 26] application receipt.” Respondent admitted that he created the April 26 receipt “by modifying another receipt I had received from [the] CPUC for the June 3 filing.” Respondent admitted that his actions “placed Mr. Coran in a position

where he unknowingly co-signed a pleading he believed to be truthful but which contained inaccuracies of which I was aware.”

20. On June 23, 2021, LTD terminated Respondent from representing it further before the CPUC. The next day, LTD terminated Respondent with respect to all matters he was handling for the company.

#### Nebraska ETC Application

21. Respondent mailed LTD’s application on April 28, 2021, and the Nebraska Public Service Commission (NPSC) accepted it for filing on May 3. On May 4, the NPSC advised Respondent by email that there was a “mandatory 30-day protest period following publication,” and that it did “not expect to be able to approve the application prior to June 7.” Respondent did not provide this information to Mr. Coran.

22. Relying on information provided by Respondent, Mr. Coran drafted the Petition for Limited Waiver to state that the NPSC “advised LTD Broadband on May 5, 2021 that NPSC has a 30-day approval process for ETC applications,” and that “LTD Broadband filed its ETC application on April 28, 2021, in sufficient time to meet the June 7 deadline.” Mr. Coran believed these statements were true at the time based on information he received from Respondent, but Respondent knew these

statements were false. Respondent did not correct these statements when he reviewed the Petition before Mr. Coran filed it with the FCC on June 7, 2021.

23. On August 3, 2021, the NPSC filed a letter with the FCC informing it of the false statements regarding LTD's Nebraska application. Specifically, the NPSC wrote that "LTD filed an application for ETC designation with the NPSC on May 3, 2021" and that "it is not accurate to state that Nebraska has a 30-day approval process for ETC applications." The letter attached a file-stamped copy of the ETC application and the May 4, 2021 email from the NPSC to Respondent.

24. On August 10, 2021, Mr. Coran filed a supplement to the Petition. Attached to this supplement were sworn declarations from Mr. Coran and Mr. Hauer, in which they both assert that they were unaware that the statements regarding LTD's Nebraska application were not true until they reviewed the NSPC's letter.

#### North Dakota ETC Application

25. Respondent faxed and emailed LTD's application on May 6, 2021. The North Dakota Public Service Commission (NDPSC) acknowledged receipt of the application by email on May 7.

26. On June 2, 2021, Respondent emailed the NDPSC for a status update. The next day, the NDPSC replied that it would issue a public notice which would expire on July 19, and that the NDPSC would then, at minimum, hold an informal



hearing on LTD's application "since LTD would be a new ETC in North Dakota." Accordingly, the NDPSC would not be able to approve LTD's application prior to the FCC's June 7 deadline. Respondent did not provide this information to Mr. Coran.

27. Mr. Coran drafted the Petition to state that LTD filed its ETC application "in sufficient time to meet the June 7 deadline." Mr. Coran believed this statement was true at the time based on information he obtained from Respondent, but Respondent knew it was false. Respondent did not correct this statement when he reviewed the Petition before it was filed with the FCC.

28. Before Mr. Coran filed the Petition with the FCC, Respondent revised it to include that "[o]n January 20, 2021, staff of the [NDPSC] called counsel for LTD Broadband and advised that it has a 30-day ETC application approval process (similar to Nebraska's)." Respondent knew this statement was false.

29. On October 4, 2021, Mr. Coran filed another supplement to the Petition. Attached to this supplement were sworn declarations from Mr. Coran and Mr. Hauer. Both declared that they had learned that statements regarding LTD's North Dakota application were not true after reviewing NDPSC's draft response to the Petition.

30. On October 26, 2021, the NDPSC filed a response to the Petition, stating that "[n]o staff member or NDPSC representative recalls speaking to LTD

prior to receiving their ETC application on May 7, 2021,” and that “the NDPSC process for deciding on an application for ETC designation has required and does require more than 30 days ....”

31. The FCC ultimately denied LTD’s request to waive the June 7 deadline based on LTD’s delay in applying for ETC designation in California, Nebraska, and North Dakota.

32. Respondent’s conduct in Count I violated the following Rules of the District of Columbia Rules of Professional Conduct:

- a. Rule 1.4(a), in that he failed to keep the client reasonably informed about the status of the matter or promptly comply with reasonable requests for information;
- b. Rule 1.4(b), in that he failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;
- c. Rule 4.1(a), in that he knowingly made a false statement of material fact to a third person in the course of representing a client; *and*
- d. Rule 8.4(c), in that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.

***Count II – Monster Broadband  
Disciplinary Docket No. 2022-D119***

33. NexTier Consortium was a winning bidder in Phase I of the RDOF, and its bid covered rural areas in 14 states. NexTier divided its winning bids among its members, and it assigned winning bids for Tennessee and Texas to Monster Broadband, Inc.

34. In December 2020, Monster retained Respondent to prepare, file, and prosecute applications for ETC designation in Tennessee and Texas.

35. On January 3, 2021, Respondent emailed Monster – via its President, Charles Johnston, and Vice President, Steve Baker – that the Tennessee Public Utilities Commission (TPUC) “doesn’t regulate ETCs anymore so we’ll need to file directly with the FCC ....” Respondent did not explain the process for obtaining ETC designation directly from the FCC.

36. On January 5, 2021, Respondent emailed Monster a draft ETC application to be filed with the Public Utility Commission of Texas. Respondent asked Mr. Johnston and Mr. Baker to review the application and provide him with any proposed changes. Respondent also wrote that “[t]he FCC app[lication] is much the same, I’ll just carry-over the changes to that one as well.”

37. On January 6, 2021, Respondent emailed Monster proof of filing the Texas ETC application. Respondent did not provide any information or update regarding Monster's application for ETC designation in Tennessee.

38. On June 2, 2021, Mr. Johnston emailed Respondent for an update regarding Monster's ETC designations in Texas and Tennessee. Respondent replied that same day that Texas had been taken care of. Although he previously said he would file with the FCC, Respondent also told Mr. Johnston that he had filed an ETC application with the TPUC "on January 6<sup>th</sup>, the date by which we had to file in order to prove good faith effort in seeking ETC status for the long form." In fact, Respondent had not filed an application with either the TPUC or the FCC. Respondent knew that his statement regarding the TPUC application was false.

39. On June 7, 2021, Mr. Baker emailed Respondent and asked whether Monster needed to file a request with the FCC to waive its June 7 deadline for ETC designations. Respondent replied that same day that he "was cleaning up a draft of the waiver now" and reiterated that he had filed an ETC application with the TPUC on January 6. Respondent knew that his statement regarding an application filed with the TPUC was false.

40. Later, on June 7, 2021, Respondent filed a Petition for Limited Waiver, which sought a waiver of the FCC's June 7 deadline to obtain ETC designation in

both Texas and Tennessee. This Petition alleged that good cause existed to grant the waiver regarding Texas because Monster had filed for ETC designation “on January 6, 2021” and “expects approval very soon, perhaps within a week or less.” Regarding Tennessee, the Petition alleged that Monster had filed an ETC application with the TPUC “on the FCC’s good faith deadline of January 6, 2021,” and that “[t]he TPUC declined jurisdiction returning the application and suggested seeking ETC authority from the FCC.” Respondent knew that the statements regarding Tennessee were false.

41. Also on June 7, 2021, Respondent filed a Petition for Eligible Telecommunications Carrier Designation with the FCC, which sought ETC designation in Tennessee on behalf of Monster. This Petition alleged that the FCC had authority to grant ETC designation because “Tennessee has declined jurisdiction over broadband internet access and interconnected voice, the supported RDOF services.” This statement was misleading. Although the TPUC generally does not grant ETC designations, it declines to do so formally on an application-by-application basis. The TPUC had not declined jurisdiction related to an application for ETC designation by Monster at the time Respondent made this statement. Respondent knew that he needed to present the FCC with a formal declination of jurisdiction by the TPUC, but he did nothing to obtain that.

42. On September 8, 2021, Mr. Johnston emailed Respondent for assistance with answering questions posed by the FCC. Specifically, the FCC wanted to know when the TPUC had notified Monster that it was declining jurisdiction, and why Monster waited until June 7 to file for ETC designation with the FCC. That same day, Respondent advised Mr. Johnston to respond to the FCC that the TPUC “declined jurisdiction sometime in mid to late January,” and that Monster “attempted to file the FCC ETC application in February” but filed it on June 7 after Respondent “could not locate” the application on the FCC’s docket. Respondent knew these statements were false. Mr. Johnston unwittingly provided this false information to the FCC.

43. On December 7, 2021, the TPUC filed a letter with the FCC informing it of the false statements in Monster’s Petition for Limited Waiver. Specifically, the TPUC wrote that it “did not receive” an ETC application from Monster “in January 2021 or anytime to-date,” that it “does not return filings,” and that “at no time has the TPUC declined jurisdiction” regarding an ETC application by Monster “as any such action is done by official agency order or, in matters involving ETC designation for broadband purposes, by formal letter” from the TPUC’s general counsel. Respondent did not inform Monster of the TPUC’s filing.

44. On December 8, 2021, Respondent filed a supplement to Monster's Petition for Limited Waiver, in which he stated that "apparently the application was returned by the postal service, not by the TPUC as stated in the original waiver petition." Respondent knew this statement was false. Respondent did not inform Monster of this filing.

45. Monster learned about the TPUC's letter and Respondent's supplement from the FCC during a telephone conversation with the agency on March 4, 2022.

46. On May 4, 2022, Monster terminated Respondent from representing it further before the FCC. Monster subsequently retained attorney Steven Coran.

47. On May 12, 2022, Mr. Coran filed a Supplement to the Petition for Eligible Telecommunications Carrier Designation with the FCC, attaching a letter he obtained the day before from the TPUC formally declining jurisdiction. Mr. Coran obtained this letter after speaking with the TPUC's General Counsel.

48. On June 8, 2022, Mr. Coran filed a Second Supplement to the Petition for Limited Waiver. Attached to this supplement were sworn declarations from Mr. Johnston and Mr. Baker. Both averred that they were previously unaware of the falsity of, and misled by, Respondent's statements regarding Monster's application for ETC designation in Tennessee.

49. On July 20, 2022, the FCC granted Monster conditional ETC designation in Tennessee.

50. On August 10, 2022, the FCC granted Monster's request to waive the June 7 deadline for obtaining ETC designation regarding both Texas and Tennessee.

51. Respondent's conduct in Count II violated the following Rules of the District of Columbia Rules of Professional Conduct:

- a. Rule 1.3(c), in that he failed to act with reasonable promptness in representing a client;
- b. Rule 1.4(a), in that he failed to keep the client reasonably informed about the status of the matter or promptly comply with reasonable requests for information;
- c. Rule 1.4(b), in that he failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; *and*
- d. Rule 8.4(c), in that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Respectfully submitted,

/s/ Hamilton P. Fox, III  
Hamilton P. Fox, III  
Disciplinary Counsel



/s/ Jason R. Horrell  
Jason R. Horrell  
Assistant Disciplinary Counsel

OFFICE OF DISCIPLINARY COUNSEL  
515 5<sup>th</sup> Street, N.W.  
Building A, Room 117  
Washington, D.C. 20001  
202-638-1501

**VERIFICATION**

I declare under penalty of perjury under the laws of the United States of America that I verily believe that the facts stated in the Specification of Charges to be true and correct.

Executed on this 31<sup>st</sup> day of October, 2022.

/s/ Jason R. Horrell  
Jason R. Horrell  
Assistant Disciplinary Counsel

**DISTRICT OF COLUMBIA COURT OF APPEALS  
BOARD ON PROFESSIONAL RESPONSIBILITY**



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**In the Matter of**

**KRISTOPHER E. TWOMEY,  
ESQUIRE**

**Respondent**

**Bar Registration No. 979338**

**Date of Admission: April 14, 2008**

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: **Disciplinary Docket Nos. 2021-  
D198 & 2022-D119**  
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**PETITION INSTITUTING FORMAL DISCIPLINARY PROCEEDINGS**

A. This Petition (including the attached Specification of Charges which is made part of this Petition) notifies Respondent that disciplinary proceedings are hereby instituted pursuant to Rule XI, § 8(c), of the District of Columbia Court of Appeals' Rules Governing the Bar (D.C. Bar R.).

B. Respondent is an attorney admitted to practice before the District of Columbia Court of Appeals on the date stated in the caption of the Specification of Charges.

C. A lawyer member of a Hearing Committee assigned by the Board on Professional Responsibility (Board) pursuant to D.C. Bar R. XI, § 4(e)(5), has approved the institution of these disciplinary proceedings.

**D. Procedures**

(1) **Referral to Hearing Committee** - When the Board receives the Petition Instituting Formal Disciplinary Proceedings, the Board shall refer it to a Hearing Committee.

(2) **Filing Answer** - Respondent must respond to the Specification of Charges by filing an answer with the Board and by serving a copy on the Office of Disciplinary Counsel within 20 days of the date of service of this Petition, unless the time is extended by the Chair of the Hearing Committee. Permission to file an answer after the 20-day period may be granted by the Chair of the Hearing Committee if the failure to file an answer was attributable to mistake, inadvertence, surprise, or excusable neglect. If a limiting date occurs on a Saturday, Sunday, or official holiday in the District of Columbia, the time for submission will be extended to the next business day. Any motion to extend the time to file an answer, and/or any other motion filed with the Board or Hearing Committee Chair, must be served on the Office of Disciplinary Counsel at the address shown on the last page of this petition.

(3) **Content of Answer** - The answer may be a denial, a statement in exculpation, or a statement in mitigation of the alleged misconduct. Any charges not answered by Respondent may be deemed established as provided in Board Rule 7.7.

(4) **Mitigation** - Respondent has the right to present evidence in mitigation to the Hearing Committee regardless of whether the substantive allegations of the Specification of Charges are admitted or denied.

(5) **Process** - Respondent is entitled to fifteen days' notice of the time and place of hearing, to be represented by counsel, to cross-examine witnesses, and to present evidence.

E. In addition to the procedures contained in D.C. Bar R. XI, the Board has promulgated Board Rules relating to procedures and the admission of evidence which are applicable to these procedures. A copy of these rules is being provided to Respondent with a copy of this Petition.

**WHEREFORE**, the Office of Disciplinary Counsel requests that the Board consider whether the conduct of Respondent violated the District of Columbia Rules of Professional Conduct, and, if so, that it impose/recommend appropriate discipline.

Office of Disciplinary Counsel

/s/ Hamilton P. Fox, III

Hamilton P. Fox, III

Disciplinary Counsel

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