

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90
)
Rural Broadband Experiments) WC Docket No. 14-259

**PAUL BUNYAN RURAL TELEPHONE COOPERATIVE
PETITION FOR LIMITED WAIVER
OF DEADLINE TO SUBMIT ETC DESIGNATION DOCUMENTATION
FOR RURAL BROADBAND EXPERIMENTS**

Paul Bunyan Rural Telephone Cooperative (“PBRT”), by its attorneys and pursuant to Section 1.3 of the Rules and Regulations of the Federal Communications Commission (“Commission” or “FCC”),¹ respectfully requests a limited waiver and extension of the June 2, 2015 deadline (“June 2 Deadline”) to provide documentation of designation as an eligible telecommunications carrier (“ETC”) in all areas for which PBRT will receive rural broadband experiments (“RBE”) funding.²

I. Background

The Commission identified PBRT as an additional provisionally selected bidder for two projects totaling \$1,962,000.00 in RBE support in the March 4 Public Notice.³ PBRT has been working diligently to complete all RBE requirements accurately and on time, including filing the

¹ 47 C.F.R. § 1.3.

² See Public Notice, *Wireline Competition Bureau Announces Additional Provisionally Selected Bidders for Rural Broadband Experiments and Sets Deadlines for Submission of Additional Information*, WC Docket Nos. 10-90 and 14-259, 30 FCC Rcd 2045 (Wireline Comp. Bur. 2015) (“March 4 Public Notice”).

³ See *id.*

required financial and technical information by the January 6, 2015, deadline,⁴ submitting FCC Form 5620 with the letter from an acceptable bank committing to provide PBRT with a letter of credit (“LOC”) for the total RBE support that PBRT will receive, and preparing and filing an application with the Minnesota Public Utilities Commission (“MNPUC”) for limited designation as an ETC in the relevant census blocks. PBRT, however, does not expect to be able to provide documentation of its ETC designation in each of the census blocks for which it was provisionally selected for RBE support by the June 2 Deadline. PBRT does expect to be able to provide the required documentation within a short period of time thereafter. As demonstrated herein, there is good cause for grant of the requested limited waiver, and grant of this limited waiver is in the public interest.

Gary Johnson is PBRT’s Chief Executive Officer (“CEO) and General Manager. He is responsible for regulatory compliance, including compliance for projects such as the RBE program. Mr. Johnson is aware of the many RBE requirements, and PBRT has worked diligently to ensure that all RBE deadlines to date have been met.

PBRT operates as an Incumbent Local Exchange Carrier (“ILEC”) in various exchanges in Minnesota. Prior to Mr. Johnson’s appointment as CEO, PBRT also obtained authority to operate as Competitive Local Exchange Carrier (“CLEC”) in the Park Rapids and Grand Rapids exchanges in Minnesota – the exchanges in which PBRT’s RBE-supported census blocks are located.

Although Mr. Johnson is aware of the RBE requirements, he believed mistakenly that when PBRT obtained its CLEC authority in the Park Rapids and Grand Rapids exchanges, PBRT

⁴ See Public Notice, *Wireline Competition Bureau Announces Deadline for Bidders Interested in Remaining Under Consideration for Rural Broadband Experiments Support to File Additional Information*, WC Docket Nos. 10-90 and 14-259, 29 FCC Rcd. 15132 (Wireline Comp. Bur. 2014).

also had obtained ETC designation in those exchanges. As PBRT prepared to obtain and file its LOC commitment letter by May 4, 2015, PBRT also began to gather documentation of its ETC designation to submit by the June 2 Deadline. Only then did PBRT discover that it did not have ETC designation for the census blocks in the Park Rapids and Grand Rapids exchanges in which PBRT was identified as the provisionally selected bidder in the March 4 Public Notice.

Upon making this discovery, PBRT immediately mobilized efforts to seek the necessary ETC designation on an expedited basis. PBRT prepared the necessary information and documentation, and on May 8, 2015, PBRT filed an application with the MNPUC seeking ETC designation on an expedited basis for the census blocks in the bids for which PBRT is provisionally selected for RBE funding.⁵

The MNPUC rules for designating ETCs parallel the federal ETC requirements to prevent fraud and abuse of universal service programs.⁶ An ETC applicant must demonstrate its ability to (1) provide supported services over its own facilities, (2) comply with service requirements, (3) comply with consumer protection and service quality standards, and (4) remain functional in an emergency. An applicant also must demonstrate that its service offerings are comparable to or exceed those of the incumbent's service offerings.

PBRT has requested expedited consideration of its ETC application. Even absent expedited treatment, the MNPUC often processes and approves ETC applications within six to eight weeks of being placed on the MNPUC docket. Therefore, PBRT may only require a very brief two to four week extension of the June 2 Deadline in order to obtain its required ETC designation and to provide documentation to the Commission. If another party challenges

⁵ See *In the Matter of the Petition of Paul Bunyan Rural Telephone Cooperative for Designation as an Eligible Telecommunications Carrier*, MPUC Docket No. P423/M-15-433 (filed May 8, 2015).

⁶ See Minn. R., part 7812.1400.

PBRT's ETC application, however, then it will require additional time in order to complete the required MNPUC procedures.⁷ PBRT will keep the Commission informed regarding the status of its ETC application, but at this time expects the timeframe for obtaining MNPUC approval of the requested ETC designation likely will extend beyond the June 2 Deadline by at least two weeks and perhaps four weeks, depending on the MNPUC's schedule, unless PBRT's application is challenged.

II. Grant of the Requested Limited Waiver Is Justified and Would Serve the Public Interest

The Commission may waive its rules for good cause shown, where special circumstances warrant a deviation from the rule, strict compliance with the rule would be inconsistent with the public interest, the requested relief would not undermine the policy objective of the rule in question, and the deviation will serve the public interest.⁸ There is good cause to waive the requirement that PBRT submit documentation of its ETC designation by June 2, 2015.

The Commission anticipated there could be circumstances when a waiver of the deadline for submitting ETC designation documentation might be appropriate if a winning bidder demonstrates that it has engaged in good faith to obtain an ETC designation, but has not received approval within the 90-day timeframe.⁹ PBRT has acted in good faith to obtain its ETC designation. As explained above, PBRT was preparing to submit its ETC designation documentation for its CLEC operations in the Park Rapids and Grand Rapids exchanges – a designation that Mr. Johnson mistakenly believed the company already had. As soon as PBRT

⁷ Only one ILEC operates within the areas where PBRT has proposed to build a broadband network with RBE funding.

⁸ See 47 C.F.R. §1.3. See generally *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

⁹ See *Connect America Fund, ETC Annual Reports and Certifications*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, ¶ 22 (2014).

discovered that it did not have the ETC designation, PBRT expeditiously and diligently prepared and filed an ETC application with the MNPUC within a matter of days, and well before the June 2 Deadline. Concurrently, PBRT is notifying the Commission of its discovered error regarding the status of its ETC designation and diligent efforts to secure the designation and file documentation by the deadline. Despite these prompt efforts, PBRT does not expect that the MNPUC will be able to grant an ETC designation by the June 2 Deadline.

There is good cause for grant of a limited waiver of the June 2 Deadline, and grant of this limited waiver is in the public interest. PBRT does not expect a significant delay in obtaining its ETC designation beyond the June 2 Deadline, even if its ETC application is challenged. A brief extension of the June 2 Deadline will not have an adverse impact on the Commission's RBE schedule; it will not undermine or significantly delay the Commission's efforts to expand broadband into unserved areas. Rather, in light of the time and resources invested by PBRT, and with the ETC designation documentation being the only remaining requirement necessary for the Commission to proceed with its final review of PBRT's RBE application, denial of the request for a limited waiver of the June 2 Deadline would be contrary to the public interest. Without the waiver, PBRT will no longer be considered for the RBE projects and it will not be able to bring broadband service to the rural, unserved areas it has proposed to serve. The apparent reason that the areas PBRT proposes to serve do not have broadband today is that there has been no viable business case to build the broadband infrastructure in these high cost areas. Without the RBE funding and grant of PBRT's request for a limited waiver of the June 2 Deadline, these areas are expected to remain unserved.

IV. Conclusion

There is good cause for grant of the limited waiver requested herein. The RBE funding that PBRT stands ready to receive should not go unused, and the rural, unserved areas that PBRT proposes to serve should not continue to remain unserved. The grant of a limited waiver to allow a brief extension of the June 2 Deadline will serve the public interest by allowing RBE funding to be used as the Commission intended and by meeting the Commission's broadband expansion goals.

Respectfully submitted,

Paul Bunyan Rural Telephone Cooperative



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