

# McDowell Rackner & Gibson PC



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May 14, 2015

Public Utility Commission of Oregon  
PO Box 1088  
Salem OR 97308-1088

**Re: Douglas Services Inc., dba Douglas FastNet's Application for Designation as an Eligible Telecommunications Carrier and Request for Waiver (Item 3 on the Regular Agenda of the May 19, 2015, Public Meeting Agenda of the Public Utility Commission of Oregon)**

Dear Chair Ackerman and Commissioners Savage and Bloom:

Comspan Communications, Inc. (Comspan or Company) is writing to withdraw its opposition to Douglas Services Inc., dba Douglas FastNet's (DFN) application for designation as an Eligible Telecommunications Carrier (ETC). As discussed below, the Company does have concerns regarding the abbreviated time period allowed by the Federal Communications Commission's (FCC) for the Public Utility Commission of Oregon (Commission) to process the application, as well as about the network DFN proposes to construct with the Rural Broadband Experiment funds. Comspan recognizes, however, that these concerns are more properly directed to the FCC, and for that reason formally withdraws its petition to intervene in this matter. For the Commission's information, the following summarizes the concerns that the Company intends to express to the FCC.

## **Background**

The purpose of the Rural Broadband Experiments grant program is to "advance the deployment of voice and broadband-capable networks in rural, high-cost areas, including extremely high cost areas, while ensuring that rural Americans benefit from the historic technology transitions that are transforming our nation's communications services."<sup>1</sup> Comspan and DFN both submitted bids in response to the FCC's Rural Broadband Experiments Order, and on March 4, 2015, DFN was identified as a provisionally selected winning bidder for an award of \$2,375,000 to provide broadband service in rural Oregon.<sup>2</sup> As a prerequisite to funding, DFN must obtain

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<sup>1</sup> *In the Matter of Connect America Fund and ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, FCC 1498, at ¶ 1 (July 14, 2014) (*Rural Broadband Experiments Order*).

<sup>2</sup> FCC Public Notice DA-15-288 in WC Docket Nos. 10-90, 14-58 (March 4, 2015).

ETC designation from the Commission by June 2, 2015 or request a waiver from the FCC requesting additional time to complete the ETC designation process.<sup>3</sup>

***Comspan Believes it is Inappropriate for the FCC to Direct a 90-Day Review Process for DFN's ETC Application***

In the Rural Broadband Experiments Order, the FCC conditioned receipt of Rural Broadband Experiments funds on the applicant's designation as an ETC. The FCC contemplated that the applicant could apply for ETC designation to the applicable state Commission after the applicant had been selected for funding, and that the applicant would "confirm [its] ETC status within 90 days of the public notice announcing the winning bidders selected to receive funding."<sup>4</sup>

The FCC's direction to complete ETC review within 90 days does not allow for a contested case proceeding and is inconsistent with the Commission's typical review process. Indeed, this Commission typically undertakes a lengthy vetting of ETC applicants, and to Comspan's knowledge, in the past five years the Commission has only approved one ETC application in fewer than six months, and most applications take much longer to process.

In the future, if the FCC intends to condition funding on the grantee receiving ETC designation, Comspan hopes that it will allow for an adequate review period to ensure that the grantee is receiving the same level of scrutiny that previous ETC applicants have received, and that allows time for the Commission and interested parties to fully vet the qualifications of the applicant.

***Comspan Disagrees with DFN's Planned Use for Rural Broadband Experiments Funding***

The primary purpose of the Rural Broadband Experiments funding is to provide voice and broadband services through the construction of outside plant facilities in unserved and underserved areas, which support access to advanced voice services to rural customers, most notably access to emergency and Lifeline services. Comspan supports the funding for improved middle mile and last mile access facilities into the high cost areas as defined by the census blocks in DFN's grant application; however, Comspan has serious concerns that DFN may be using the Rural Broadband Experiments funding to develop common central office switching in Roseburg,<sup>5</sup> which is certainly not a high cost or rural area and already has significant telecommunications investment as the county seat of Douglas County. The proposed central office will house a new Class 4/5 switch, ancillary support equipment, custom power resources and other direct and indirect investment that supports the voice switching infrastructure which will benefit DFN's current, embedded customers that already have various choices of local carriers in an already developed competitive environment. Comspan believes

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<sup>3</sup> *Id.*

<sup>4</sup> *Rural Broadband Experiments Order* at ¶ 22. While the FCC appears to have contemplated that ETC designation could occur after the winning bidders were announced, Comspan believes that DFN could have and should have applied for ETC designation sooner. DFN has been aware that, if selected, it would need to pursue ETC designation since at least February 27, 2014. See DFN Expression of Interest – Rural Trials, Docket No. 10-90, available at:

<https://prodnet.www.neca.org/publicationsdocs/wwwpdf/3514dfn.pdf>

<sup>5</sup> See Declaration of Todd Way in Support of DFN's Answer to Petition to Intervene, ¶ 3 (May 7, 2015).

that building out this type of infrastructure—which would be used to serve urban customers in addition to rural customers—is not consistent with the spirit of the Rural Broadband Experiments.

**Conclusion**

Comspan recognizes the substantial public interest in ensuring that the award of approximately \$2.4 million in federal funds may be used to expand broadband service in rural Oregon. Comspan hopes that in the future, where the FCC wishes to condition the grant of federal dollars on an applicant receiving ETC designation, the FCC will also allow adequate time for the Commission and interested parties to raise their concerns.

Comspan appreciates the time Commission Staff has taken with the Company to discuss these matters and explain the expedited ETC review process.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Lisa F. Rackner", with a long horizontal flourish extending to the right.

Lisa F. Rackner

McDowell Rackner & Gibson PC

Attorneys for Comspan Communications, Inc.

cc: ALJ Pines  
Kay Marinos  
Bryan Conway