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May 8, 2015

VIA E-FILING

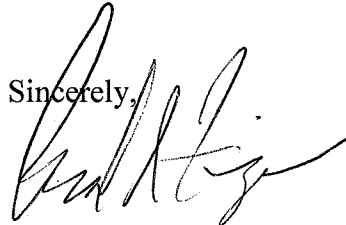
Public Utility Commission of Oregon
3930 Fairview Industrial Drive SE
PO Box 1088
Salem OR 97308-1088

Re: UM 1721 - Answer to Petition to Intervene - Douglas Services, Inc. d/b/a Douglas
FastNet

Dear Sir/Madam:

Attached for filing you will find Douglas FastNet's Answer to Comspan's Petition to
Intervene.

Sincerely,



Richard A. Finnigan

RAF/cs

cc: Client (via email)

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5 **BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**
6

7 In the Matter of

8 Application of Douglas Services, Inc. d/b/a
9 Douglas FastNet for Designation as an
10 Eligible Telecommunications Carrier and for
11 Designation as an Eligible
12 Telecommunications Provider in the State of
Oregon and Request for Waiver

DOCKET NO. UM 1721

ANSWER TO PETITION TO INTERVENE

13 On May 6, 2015, Comspan Communications, Inc. ("Comspan") filed an application to
14 intervene in the above-referenced docket. Petitions to Intervene are governed by two separate rules.
15 Pursuant to OAR 860-001-0400(4) an answer to a petition to intervene is due within ten days of
16 filing. Under OAR 860-001-0400(5) replies to response to pleadings are not allowed unless
17 authorized by the Commission or the Administrative Law Judge. Under OAR 860-001-300(5), an
18 objection to a petition to intervene must be filed within ten days of the filing of a Petition and under
19 this rule a reply is allowed up to seven days later. Assuming that OAR 860-01-300(5) applies, for
20 reasons that will be explained below, Douglas FastNet ("DFN") respectfully requests that the
21 Commission and Administrative Law Judge require that any reply be filed on an expedited basis.
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1 STANDARD OF REVIEW

2 Under OAR 860-001-300(6) the standard for consideration of a petition to intervene is
3 whether it demonstrates sufficient interest and whether the petition will not (1) result in
4 unreasonably broadening the issues, (2) present a burden on the record, or (3) delay the
5 proceedings. In this case, DFN asserts that Comspan's Petition to Intervene will unduly delay the
6 proceedings and seeks to unreasonably broaden the issues. Further, Comspan does not present a
7 sufficient intent to have standing to bring the Petition to Intervene. DFN requests that the Petition
8 to Intervene filed by Comspan be denied.
9

10 BACKGROUND

11 The Application filed in this matter by DFN is to meet the requirement established by the
12 Federal Communications Commission ("FCC") under their order creating rural broadband
13 experiments that once an entity has been provisionally selected as a winning entity it must obtain
14 eligible telecommunications carrier ("ETC") status¹ and, most importantly, it must do so on an
15 expedited basis.² As of today, DFN has met all of the requirements of the FCC to be fully awarded
16 the rural broadband experiment in the State of Oregon with the sole exception of obtaining ETC
17 status. Under the FCC's provisional designation as award winner, the requirement to satisfy the
18 status of being designated as an ETC has to occur no later than Tuesday, June 2, 2015 at 11:59 p.m.
19 EST.³ Because of the short time, the Petition to Intervene will unduly delay the proceedings.
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21

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23 ¹ *In the Matter of Connect America Fund ETC Annual Reports and Certifications, Report and Order and Further
Notice of Proposed Rulemaking*, WC Docket No. 10-90 and WC Docket No. 14-58, FCC 1498 (rel. July 14, 2014).
(Rural Broadband Experiments Order).

24 ² See, DA 15-288

25 ³ The Public Notice uses the designation "EST." The correct designation should be "EDT."
26

1 BASIS TO DENY PETITION

2 The Petition to Intervene should be denied for three reasons. First, the Petition to Intervene
3 raises a new issue that unreasonably broadens the issues in the proceeding. Second, the Petition to
4 Intervene does not demonstrate that Comspan has an interest in whether DFN is designated as an
5 ETC or not. Third, the Petition to Intervene will unreasonably delay the proceeding.
6

7 1. The Petition to Intervene Broadens the Issues in the Proceeding.

8 The primary issue that Comspan appears to raise is the following statement: "The
9 Commission should also avoid the possibility that the financial requirements for ETC eligibility not
10 be subsidized after the fact utilizing federal subsidies that are dependent on such investment as a
11 prerequisite." This argument seems to suggest that DFN would have to have first built the network
12 as a prerequisite to obtaining ETC status. The Petition to Intervene also infers that DFN has not
13 built any portion of the network needed to provide service. When and how facilities are paid for by
14 the ETC is not part of the issues for considering whether to designate a carrier as an ETC. In
15 addition, this issue is incorrect both legally and factually. The important point is that this is
16 certainly a new issue that would not otherwise have to be addressed absent the Petition to Intervene.
17

18 Nothing in the FCC's rules for ETC status requires that the complete network already exists
19 as a prerequisite to being designated as an ETC. Nor does anything in the Commission's ETC order
20 contain such a requirement.⁴

21 The basic requirement contained in 47 C.F.R. 54.201 simply states that the common carrier
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24 ⁴ *Public Utility Commission of Oregon Staff Investigation to Establish Requirements for Initial Designation and*
25 *Recertification of Telecommunications Carriers Eligible to Receive Federal Universal Service Support, Docket UM*
26 *1217, Order No. 06-292 (June 13, 2006) ("ETC Order").*

1 designated as an ETC must "offer the services that are supported by federal universal service
2 support mechanisms. . . either using its own facilities or a combination of its own facilities and
3 resale of another carriers services (including the services offered by another eligible
4 telecommunications carrier); and advertise the availability of such services through media of
5 general distribution." (section headings omitted). There is nothing in this rule that states that the
6 facilities must be built prior to designation as an ETC.
7

8 Indeed, such a requirement would be contrary to the very purpose of the rural broadband
9 experiment. Please remember that the Application filed by DFN is for designation as an ETC to
10 provide service in certain specifically identified census blocks pursuant to a grant awarded under
11 the rural broadband experiments initiative of the FCC. There is absolutely nothing in the FCC's
12 Rural Broadband Experiments Order that suggests that the facilities must be built prior to
13 designation. Indeed, that does not make sense since a key purpose of the program is to establish
14 build-out requirements for the rural broadband experiment projects.⁵
15

16 Even if it were the case that at least portions of the network must be built first, DFN has
17 done so. As pointed out in the declaration of Mr. Todd Way, attached hereto as Exhibit 1, DFN has
18 built a fiber backbone network in Douglas County that exceeds three hundred miles in length. This
19 is a substantial investment in the telecommunications facilities that will be used to serve the census
20 blocks that are the subject of the Application. In fact, as pointed out in Mr. Way's Declaration,
21 Comspan is fully aware of these facilities since Comspan leases capacity from DFN on DFN's fiber
22 network.
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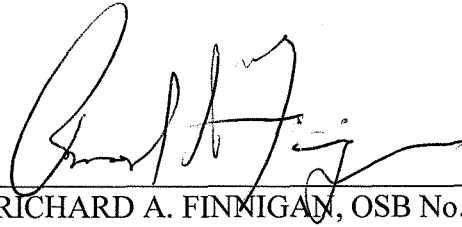
24 ⁵ Rural Broadband Experiments Order beginning at ¶ 72.
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CONCLUSION

For the reasons set forth above, DFN respectfully requests that the Petition to Intervene filed by Comspan in this matter be denied.

DATED: May 8, 2015.



RICHARD A. FINNIGAN, OSB No. 965357
Attorney for Douglas Services, Inc. d/b/a Douglas FastNet

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of

DOCKET NO. UM 1721

Application of Douglas Services, Inc. d/b/a
Douglas FastNet for Designation as an
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Telecommunications Provider in the State of
Oregon and Request for Waiver

DECLARATION OF TODD WAY

COMES NOW Todd Way, on behalf of Douglas Services, Inc. d/b/a Douglas FastNet
("DFN") and make the following declaration.

1. I am over the age of eighteen and am the Manager of DFN and make this declaration in that capacity.
2. DFN provides services throughout Douglas County through a substantial investment that it has made to build a fiber network. It provides service using primarily its own facilities, but does use, in small part, other facilities.
3. Under the rural broadband experiment, the monies will be used to provide DFN with a soft switch and the last mile connections to the customers within the census blocks contained in the Application. This will make DFN an end-to-end provider of telecommunications

DECLARATION OF TODD WAY - 1

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services for those customers served in the included census blocks using DFN's own facilities.

4. Comspan Communications, Inc. is aware of DFN's fiber network background since Comspan purchases services from DFN that use and rely upon the existing DFN fiber network, which consists of over three hundred miles of fiber in Douglas County.
5. I am familiar with the facilities deployed by Comspan within Douglas County. Those facilities are within the City of Roseburg. Comspan does not have any facilities within the census blocks covered by the rural broadband experiment and DFN's Application in this docket.

Dated this 7th day of May, 2015.


TODD WAY