

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 19, 2015

REGULAR X CONSENT _____ EFFECTIVE DATE May 19, 2015

DATE: May 11, 2015

TO: Public Utility Commission

FROM: Kay Marinos *KM*

THROUGH: Jason Eisdorfer *E* and Bryan Conway *BAC*

SUBJECT: DOUGLAS SERVICES INC.: (Docket No. UM 1721) Application for ETC and ETP Designations.

STAFF RECOMMENDATION:

Staff recommends the Commission grant the request of Douglas Services Inc., dba Douglas FastNet (DFN) for designation as a federal Eligible Telecommunications Carrier (ETC) for the purposes of receiving Rural Broadband Experiment and Lifeline federal universal service funds, and for designation as an Eligible Telecommunications Provider (ETP) to participate in the Oregon Telephone Assistance Program (OTAP), in the census blocks listed in Exhibit A. To enable DFN to meet federal requirements for this funding, Staff also recommends that an order granting such designations be issued as early as possible, but no later than June 1, 2015.

DISCUSSION:

A. Background

DFN, a wholly owned subsidiary of Douglas Electric Cooperative formed in 2001, is a competitive provider of broadband and voice services to residential, business and institutional customers in Douglas County. The company holds a certificate of authority to provide telecommunications service as a competitive provider.¹ DFN currently offers broadband services to over 3,000 customers and voice services to over 1,000 customers.

On March 20, 2015, DFN filed an application requesting designation as a federal ETC and ETP to enable the company to receive \$2.375 million of federal universal service

¹ Order No. 09-322 in Docket No. CP 1457.

Rural Broadband Experiment (RBE) support. DFN participated in the Federal Communications Commission (FCC) auction for these funds and was announced as a provisional winning bidder on March 4, 2015.² To meet the last remaining post-selection requirement for receiving the funding, DFN must submit evidence of ETC designation to the FCC no later than June 2, 2015. DFN has already fulfilled the other post-selection requirements to submit three consecutive years of audited financial statements and a letter of credit.

The FCC developed the Rural Broadband Experiment in order to explore how to structure the Connect America Fund (CAF) Phase II universal service fund competitive bidding process, to gather information about interest in deploying next-generation broadband networks in high-cost areas, and to provide support for last-mile broadband service to consumers in rural areas.³ The support was awarded through a “reverse” auction process in which the lowest bids (relative to maximums set by the FCC) were selected to provide broadband services in specific census blocks. The census blocks included in the auction were those not currently served by an unsubsidized competitor offering Internet access service providing 3 Megabits per second (Mbps) downstream and 768 kilobits per second (kbps) upstream as identified by the National Broadband Map. Only areas served by federal price cap carriers were included in the auction. In Oregon, those are areas served by the CenturyLink and Frontier local exchange carriers. Awarded funds were limited to a \$100 million cap and divided into three categories depending on the minimum broadband speeds required. The category of funding for which DFN qualified, that with “very high performance standards,” was capped at \$75 million. The winners of funds in this category had to propose to deploy a network capable of delivering 100 Mbps downstream/25 Mbps upstream, while offering at least one service plan that provides 25 Mbps downstream/5 Mbps upstream to all locations within the selected census blocks. Also, recipients were required to provide usage and pricing that is reasonably comparable to usage and pricing available for wireline offerings in urban areas, and latency no greater than 100 milliseconds (ms).⁴

DFN proposes to use the support funds for a fiber-to-the-home (FTTH) project utilizing Gigabit Passive Optical Networks (GPON) technology capable of delivering broadband services at speeds up to 250 Mbps downstream and 25 Mbps upstream, as well as voice services. The project will cover 2,495 customer locations, including six anchor institutions, in the remote foothills of the Cascade and Coastal mountain ranges of southwestern Oregon.

² FCC Public Notice DA 15-288 released March 4, 2015.

³ *In the Matter of Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, released July 14, 2014 (*RBE Order*).

⁴ *RBE Order* at ¶ 26.

B. ETC and ETP Designation

a. ETC Designation

Section 214(e)(2) of the Federal Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), delegates authority to state commissions to designate common carriers that are eligible to receive federal universal service support, i.e., ETCs. State commissions may confer federal ETC status on ILECs or competitive common carriers that meet the conditions set out in Section 214(e)(1) of the Act. In general, those conditions require that the ETC offer and advertise, throughout its designated service area, the services that are supported by federal universal service support mechanisms. The carrier must provide the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's service.

Each state may adopt specific requirements for ETC designation that are consistent with requirements of the Act. The Commission adopted its own set of requirements for federal ETC designation in Docket UM 1217, Order No. 06-292 (ETC Order). These are listed in Appendix A to the ETC Order. Staff does not list them all here. Updates to those requirements, which are needed to incorporate subsequent changes made by the FCC, are currently under consideration in Docket UM 1648.

b. ETP Designation

FCC rules require that an ETC offer Lifeline services to qualifying low-income customers within its designated service area.⁵ In order to offer Lifeline services in Oregon, a carrier must be designated as an ETP to participate in the OTAP, which is the state-mandated corollary of the FCC Lifeline program. OAR 860-033-0005(7) defines an ETP as "a provider of telecommunications service, including a cellular, wireless, or other radio common carrier that is certified by order of the Commission as eligible to provide OTAP to its qualifying customers throughout a designated service area" by having met ETC eligibility criteria and demonstrating that it will comply with OAR 860-033-0005 through 860-033-0110.

The OTAP is set forth and explained in both state statute and in Commission OARs.⁶ The program enables carriers to offer discounts on basic voice services, whether sold separately or in combination with other services, to low-income residential customers

⁵ FCC rules also require ETCs to offer Link Up if designated on Tribal Lands. DFN's proposed designated service area does not include any Tribal Lands.

⁶ See generally Oregon Laws 1987, chapter 290, Sections 1 through 8; OAR Chapter 860, Division 033.

who meet eligibility requirements. The OTAP provides \$3.50 of monthly support that is in addition to \$9.25 of monthly support from the federal Lifeline program.

C. Staff's Review and Analysis

Shortly after the FCC released the notice that DFN was a provisional winner of RBE funds, DFN's representative contacted Staff to discuss ETC application requirements. Soon after that, DFN filed its application for ETC and ETP designations. Staff then contacted CenturyLink, the incumbent carrier in the funding area, to determine the company's interest in the application. The CenturyLink representative indicated that the company would not intervene in the docket or oppose the designation request. Through discussions with the company and a review of relevant FCC orders and rules, Staff gained a better understanding of the company's bid proposal to the FCC, how the company plans to offer the required services, and FCC requirements for this type of funding. To supplement information in the application, DFN filed additional information on May 8 that included a map showing the census blocks that would comprise the designated service area, a map showing DFN's current fiber network, and an affidavit that the company will use the support funds only for the intended purposes. After careful consideration, Staff concluded that DFN meets the Commission's ETC requirements, except for the submission of a network plan. Staff supports the FCC's rationale for the lack of a need for such a plan, which is discussed in more detail below. In order to meet the FCC's June 2 deadline for designation, Staff requested that an item be placed on the agenda for the Commission's May 19, 2015 public meeting to present its recommendation to the Commission.

On May 6, 2015, Comspan, a competitive carrier that currently receives federal and Oregon universal fund support in certain areas of southern Oregon, filed a Petition to Intervene in this docket. However, Staff sees no arguments in the Petition that would change its recommendation to grant ETC and ETP designation to DFN. Even if doubts were to be raised about DFN's ability to meet its obligations if it receives funding, the public interest dimensions associated with prohibiting DFN from receiving the federal RBE funding are overwhelming. This is a one-time opportunity to ensure that a segment of Oregon's rural population will be able to obtain access to the internet, and at speeds that many in urban areas of the state already enjoy. The FCC has identified these areas, among others, as eligible for support based on the current lack of robust broadband and the high cost of providing such facilities and services.⁷ Furthermore, these funds are available only to DFN at this juncture; no other providers submitted winning bids in this, or any other, area of Oregon.

⁷ FCC Public Notice DA 14-1021 released July 25, 2014.

The following sections a. and b. address how DFN meets the specific requirements for ETC and ETP designation, respectively.

a. ETC Designation

DFN has demonstrated that it satisfies the applicable ETC requirements as discussed below. The following numbers correspond to the application requirements in Appendix A of the ETC Order.

1. Common carrier status: DFN is a common carrier certificated by the Commission to offer local exchange and interexchange services in Oregon. See Order No. CP 09-322.
2. Commitment and ability to provide all supported services: DFN commits to provide the supported services. The ETC Order refers to supported services as “[v]oice grade access to the public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance, and toll limitation for qualifying low-income consumers.” Order No. 06-292, Appendix A, page 1. Supported services are currently defined by the FCC in 47 CFR § 54.101(a) as “voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier’s service area has implemented 911 and enhanced 911 systems; and toll limitations services to qualifying low-income consumers.” The FCC updated this definition to facilitate incorporation of newer voice technologies (such as wireless and VoIP) after the definition in the ETC Order was adopted.⁸ The services no longer required by the FCC are dual tone multi-frequency signaling, single party service, access to interexchange service, operator services, and directory assistance. However, DFN will still offer those services as part of its voice offering. DFN will offer a stand-alone voice service with unlimited local calling for a price that will not exceed \$34.99 per month, and the same voice service bundled with broadband service of 50 Mbps down/10 Mbps up for \$59.99 per month. Additionally, to meet requirements for RBE funds, DFN will offer three stand-alone broadband plans: 1) a 50/10 Mbps offering that will not exceed \$39.00 per month; 2) a 100/25 Mbps offering with 300 gigabits of usage for \$54.99 per month; and 3) a

⁸ Phase II of Docket UM 1648 was opened to review ETC designation requirements.

250/25 Mbps offering with 300 gigabits of usage for \$149.00 per month. All plans include up to 300 gigabits of usage in the price. Per FCC requirements, all will have less than 100 ms of latency.

In addition, ETCs must commit to offering federal Lifeline service to qualifying low-income customers, and to participate in the OTAP. OTAP participation requires ETP designation, which DFN requests as part of its Amended Application. ETP designation is addressed in subsection b. below.

In its application, DFN commits to providing the supported services. The most significant demonstration of its commitment to do so lies in the actions the company has taken so far to meet the RBE funding requirements. It applied for, and provisionally won, RBE funding through the FCC's auction process. This required careful and detailed planning in order to determine the costs that DFN would incur to meet the obligations associated with funding compared to the maximum support the FCC made available. DFN also had to acquire a letter of credit as a condition of receiving the federal support funds.

3. Commitment and ability to provide service throughout the designated service area:
The proposed designated service area consists of the census blocks for which DFN bid for support in the auction and the FCC provisionally granted funds. These census blocks are listed in Exhibit A of this memo and visually depicted as the red or darkened areas in the map in Exhibit B. As the RBE funding only applies in areas served by price cap companies (in this case CenturyLink), the few census blocks that cross into service areas of non-price cap companies, such as Cascade Utilities, are excluded for funding and service provisioning purposes.

DFN commits to provide the required services throughout the designated service area. Even though some of the locations were not reflected in the funding award amount, DFN must provide service to all locations in the designated service area as a condition of receiving the funding. While DFN currently serves some customers in some of the census blocks, it obviously does not offer broadband at the required speeds everywhere. That is the purpose of the funding – to enable DFN to provide the services that are lacking. DFN will receive thirty percent of the total support awarded up front, and the remainder in equal monthly installments over the next ten years. The build-out requirements for this “accelerated disbursement option” are that DFN must deploy service to twenty-five percent of the required locations within fifteen months of the first disbursement of support, to eighty-five percent of the locations within three years, and to all locations within five years.⁹

⁹ RBE Order at ¶ 75.

4. Types of facilities used to provide service: DFN currently provides broadband services to over three thousand customers utilizing wireless, DSL, and fiber-to-the-home facilities. DFN deployed voice services in 2011 and has approximately one thousand voice customers. DFN has an extensive fiber network in place, which is depicted in DFN's May 8 supplemental filing. DFN will expand its fiber network to deliver service to the census block areas for which the RBE funds are intended. DFN's application includes a diagram in Exhibit 3, page 42, that shows the switch and router configurations that it will use to provide services. Exhibit 3 of the application also includes technical descriptions of the equipment, as well as a certification from a technology consulting firm that DFN's plans demonstrate a network capable of delivering voice and broadband services up to 100 Mbps. This information was filed with the FCC.

The FCC encouraged new types of service providers, including electric utilities, fixed and mobile wireless providers, wireless internet service providers (WISPs), and state and regional authorities, with new types of technologies, to bid for funds.¹⁰ While winners must also provide voice service, the primary emphasis of the experiment was on broadband deployment to provide high speed access to the internet. Therefore, auction winners may differ from the typical local exchange providers or ETCs designated in the past.

5. Commitment to use support only for the intended purposes: DFN filed an affidavit that it will use the support only for the intended purposes. Order 06-292, as well as FCC rules, also requires an applicant for high-cost support to submit a five-year network plan demonstrating how the applicant will use the support funds. For RBE fund recipients, however, the FCC waived this requirement to file a five-year service quality plan on the basis that additional requirements were being imposed to ensure that the FCC is kept apprised of the build-out progress.¹¹ These requirements include annual reporting of locations to which facilities were deployed and a one-time interim report on November 1, 2015, after the first funding disbursement. Based on the FCC action, DFN requests that the Commission waive this requirement for the same reasons that the FCC did. Staff supports that request and recommends waiver of ETC Application Requirement 5.3 for a formal network plan.
6. Commitment to advertise supported services: DFN commits to advertise the availability of the supported services and the relevant charges using media of

¹⁰ RBE Order at ¶ 10.

¹¹ RBE Order at ¶ 77.

general distribution. It is in the company's interest to advertise in order to gain customers and associated revenues.

7. Commitment to offer and advertise Lifeline, Link Up and OTAP services: DFN commits to offer and advertise Lifeline and OTAP services for qualifying low-income customers. These services are discussed in more detail below as they pertain to ETP designation.
8. Ability to remain functional during emergencies: DFN certifies that as a facilities-based provider, it has the ability to remain functional in emergency situations through access to back-up power, the ability to re-reroute traffic around damaged facilities, and capabilities for handling traffic spikes. When DFN receives funding, it will install direct trunks to the Douglas County PSAP to provide local access to 911 services.
9. Commitment to service quality and consumer protection standards: DFN makes this commitment. As a licensed competitive local exchange provider in Oregon, DFN will continue to be subject to Oregon consumer protection laws, service quality standards and other rules governing CLECs promulgated by the Commission.
10. Public interest: Designation of DFN as an ETC to receive federal universal service funds is in the public interest. DFN's designation will result in improved and faster internet access for some customers, and provide the first opportunity for other customers to obtain high speed internet access. There may not be another opportunity for this Commission to ensure that residents and businesses in these areas of Douglas County have access to broadband services.
11. Annual reporting requirements: Annual reporting requirements for designated ETCs are set forth in Appendix A of the ETC Order, as amended by Commission Order No. 13-228 and Commission Order No. 14-198. DFN agrees to abide by all ETC annual reporting requirements established by the Commission. If it receives funding, DFN will also be subject to FCC reporting requirements. Staff reserves the right to request additional information if it determines a need for more in-depth monitoring should DFN receive RBE funding.

Staff also points out that the FCC has adopted safeguards relative to DFN's performance. First, DFN is subject to the FCC's post-selection review requirements. FCC staff will perform a technical and financial review "to ensure that the selected applicants meet our expectations for technical and financial capability to conduct and

experiment before any support is provided.”¹² Second, the FCC requires reporting that will enable the FCC and the Commission to determine whether DFN is meeting its commitments on schedule. Third, the FCC has adopted measures “to ensure participants meet the terms and conditions of the rural broadband experiments.”¹³ These measures relate to non-compliance and include triggers for performance default and possible reduction and recovery of support.

b. ETP Designation

As discussed above, DFN meets ETC eligibility requirements. Regarding DFN’s demonstration of its ability to meet OTAP requirements for ETP status, DFN will make available to customers within its designated service area Lifeline discounts of \$12.75 per month on any service plan that includes voice service. Staff met with personnel from DFN to further discuss OTAP program requirements and ascertain whether DFN would be able to meet them. DFN committed to work with Staff to ensure that OTAP program requirements will be met following designation. Customers will submit Lifeline applications to the Commission, and Staff will verify that customers meet initial and ongoing eligibility requirements. Staff will also ensure that DFN provides Lifeline services in compliance with applicable FCC rules and requirements. Based on the foregoing, Staff finds DFN meets ETP eligibility requirements.

CONCLUSION:

Staff finds DFN’s application demonstrates the carrier has satisfied eligibility requirements for ETC and ETP designation for purposes of receiving RBE, Lifeline and OTAP support. Staff supports a waiver of ETC Order Application Requirement 5.3, a formal network build-out plan, based on the specific RBE build-out requirements, and the corresponding FCC waiver. Staff finds granting DFN’s application without further review satisfies the public interest. If the Commission issues an ETC designation order by June 2, 2015, it will enable DFN to meet the FCC’s deadline to receive RBE funding.

PROPOSED COMMISSION MOTION:

The Commission designate Douglas Services, Inc. dba Douglas FastNet as a federal ETC for purposes of receiving federal universal service Rural Broadband Experiment and Lifeline funds, and as an ETP to participate in the OTAP, in the census blocks listed

¹² RBE Order at ¶ 51.

¹³ RBE Order at ¶ 88.

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in Appendix A; grant a waiver of ETC Application requirement 5.3 for a formal network plan; and issue a designation order by June 2, 2015 to enable the company to meet the FCC's deadline to receive funding.

EXHIBIT A
 Douglas Services Inc. dba Douglas FastNet
 Federal ETC Designated Service Area – Oregon*
 Census Blocks

410190700002343	410190700001020	410190700002115	410191700002312	410190600001208
410191000002055	410190600001173	410190400001118	410190600001067	410190600001081
410190400003036	410191700002001	410190300003614	410190500012044	410190400001227
410191700002285	410190300001287	410190300001102	410191700002332	410191000001139
410191700002193	410190300002057	410190700002147	410190600001158	410191700002095
410190600001074	410190300001284	410190900001099	410190700002132	410190900001190
410191700002170	410190300001014	410191700002358	410190300003416	410190700002153
410191700002178	410191700002351	410190300001397	410190600001187	410190300002028
410190400003054	410190300002159	410190300001378	410190700002372	410190600001113
410190400001028	410190400001228	410190400003003	410190700002393	410190300001384
410191700002165	410190600001078	410190500012038	410190700001008	410190400001070
410190300002444	410190400001201	410190400001006	410190600001089	410190300001417
410191700002137	410191600005006	410190400001043	410190300002054	410190700001002
410191000001057	410191700002120	410190600001193	410190600001018	410191700002122
410190600001028	410190400003033	410190500011156	410191700002093	410190500011171
410190300003450	410190500012117	410190300003455	410190900001102	410191100001021
410190600001130	410191600001017	410191700001067	410191700002116	410190600001191
410190300002036	410190600001026	410191700002567	410191100002027	410190700002150
410191700002192	410191100002026	410191000001092	410190500011064	410190400003109
410190600001206	410190600001085	410191100002000	410190400003042	410190300001399
410190600001092	410191100001022	410191000001036	410190600001039	410190400001061
410190400001041	410190600001213	410190900001092	410190500012017	410190400003081
410190600001069	410190300001382	410190500011257	410190400003090	410190400001099
410190700002146	410190400003069	410190700003017	410190400003094	410191000001037
410190400001161	410190500011285	410190900001204	410190600001088	410190600001216
410191100001011	410191000001107	410190700002368	410190400003040	410191700002164
410191100001067	410190300002435	410190600001238	410190300003404	410190700002128
410190600001205	410191700002125	410190700002148	410190900001050	410190600001044
410190600001093	410190300001379	410190300001354	410190300002440	410190900001093
410190500012062	410190400001121	410190300001376	410190500012020	410190300001064
410190500012004	410191700002517	410190300001329	410190400001117	410190400001060
410190600001155	410190900001177	410191700002113	410190400001095	410190600001203
410190600001076	410190300001293	410190900001112	410190600001042	410190300001401
410190400001197	410191700002103	410190600001068	410190400001179	410190300003415
	410190400001003	410190500012013	410191700002107	410190700003037
	410190600001147	410190400003096	410190300002408	410190500011161
	410190600001109	410191700002172	410190700001053	410190700001054
	410190400003041	410190700002525	410190600001239	410190300001398

*Includes only areas within CenturyLink exchanges, excludes areas in territory of any other ILECs.

EXHIBIT A (continued)
 Douglas Services Inc. dba Douglas FastNet
 Federal ETC Designated Service Area – Oregon*
 Census Blocks

410191000001076	410191600001024	410190900001061	410191700002516
410191700002161	410190500012051	410190900001201	410191000001110
410190600001038	410191700002564	410190300001112	410190700002365
410190300001298	410191600001023	410190300001422	410190400001091
410190400001047	410190300001110	410191000001093	410190300001111
410191700002559	410190600001091	410191000001039	410191700002189
410190400003076	410190600001070	410190700003083	410190300002443
410191700002334	410190500014006	410190600001194	410190300002429
410190700003084	410190400003075	410190400001229	410190600001090
410191700002092	410191000001130	410190400001065	410190500012113
410190400001014	410190500011152	410190500012046	410190500012111
410191700002224	410191600001025	410191700002338	410190300001185
410191700002020	410190300003687	410190300001280	410191700002174
410191000001059	410190300001115	410191100001013	410191000001089
410191700002518	410190400001062	410190900001051	410190600001017
410190600001190	410191100001031	410191100001032	410190700002386
410190700001073	410190600001202	410190300002405	410190700002129
410190300001396	410191700002206	410190400001056	410190600001189
410190300001286	410190600001153	410190400001098	410190300001290
410191100001019	410191700002207	410190300001340	410190300001191
410190300001294	410190300003685	410190300003445	410190300001335
410190700002519	410191700002337	410191600001029	410190600001144
410191700002163	410190400001122	410191700002018	410190300002050
410190300001292	410190500011208	410191700002313	410190300001105
410190700002395	410191100001056	410190400001019	410190500012086
410190600001105	410190300001103	410190700003024	
410190300001326	410191100001035	410191100001034	
410190400001009	410190400001244	410190400003000	
410190400001064	410190300002576	410191600001026	
410191700002333	410191700002109	410190300002037	
410190300003616	410190300001312	410191700002359	
410190600001182	410190600003088	410190400003012	
410190500012125	410190300001334	410190300003447	
410190500011218	410190700002363	410190300002531	
410190700003018	410191700002139	410191700002329	
410190400001097	410190700003082	410191700002121	
410191700002223	410191100001033	410190700002116	
410190600002001	410190500011176	410191700002572	

*Includes only areas within CenturyLink exchanges, excludes areas in territory of any other ILECs.

EXHIBIT B

Map of RBE Census Blocks

