

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	WC Docket No. 09-197
Connect America Fund)	
)	Plains Internet, LLC
Phase II)	

**PLAINS INTERNET, LLC'S REQUEST FOR LIMITED WAIVER
AND EXTENSION OF ETC DESIGNATION DEADLINE**

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February 13, 2019

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Pursuant to 47 C.F.R. § 1.3 and for good cause, Plains Internet, LLC (“*Plains*,” or, in the alternative, the “*Company*”), through its below-named counsel, respectfully requests a limited waiver of the Eligible Telecommunications Carrier (“*ETC*”) Designation deadline of February 25, 2019 for the Federal Communications Commission’s (the “*FCC*,” or, in the alternative, the “*Commission*”) Connect America Fund II (“*CAF*”) Auction 903, and an extension of said deadline to ten (10) days after the Public Utility Commission of Texas (“*PUC*”) issues its order.

I. Introduction and Background

Plains is a technology company based in Amarillo, Texas, that specializes in providing business and residential wireless Internet throughout the Texas panhandle. Plains serves over 3,000 customers in 18 counties, primarily in rural areas. The Company seeks to secure its CAF II Auction 903 award of \$6,153,040.20 in funding for a total of 4,763 locations in three states by completing the process outlined by the FCC in its Public Notice FCC 18-6A.¹ To finalize a CAF II award, the Commission requires documentation of ETC Designation within 180 days from the

¹ See *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, WC Dkt. No. 10-90, FCC 18-6, (rel. February 1, 2018).

date of the award.² Because the Commission announced its CAF II awards on August 28, 2018, the deadline to establish ETC designation is February 25, 2019.³

To date, Plains has secured ETC Designation with one of the three relevant state regulatory agencies. The New Mexico Public Regulation Commission granted the Company ETC Designation on November 19, 2018.⁴ As of February 13, 2019, neither the Corporation Commission of Oklahoma nor the PUC of Texas have issued a final order regarding Plains' pending applications for ETC Designation.⁵

II. Due Diligence on the Part of Plains Internet, LLC with Respect to its Texas Application Justifies a Waiver and Brief Extension of Time

Plains began the process of becoming a designated ETC in the State of Texas as far back as 2016, when the Company opened an Application for ETC Designation with the PUC.⁶ Attempting to handle this matter without the assistance of counsel, Plains' management received information indicating that the FCC had appropriate jurisdiction to issue their ETC Designation application, not the PUC.⁷ Therefore, in 2016, the Company began the process of seeking ETC

² *Id.* at ¶ 310.

³ See <https://www.fcc.gov/auction/903> (last visited February 12, 2019).

⁴ See Cause No. 18-00304-UT, *Order Granting Application of Plains Internet, LLC for Designation as an Eligible Telecommunications Carrier in all New Mexico Census Blocks for which Plains Internet, LLC was a Winning Bidder in the Federal Connect America Fund Phase II Auction* (November 19, 2018).

⁵ See PUC Docket No. 48939. See also Cause No. PUD 201800137, Order No. _____, *Final Order Designating as an Eligible Telecommunications Carrier*, (February 7, 2019). As of February 13, 2019, the Corporation Commission of the State of Oklahoma has not yet signed the 2-7-2019 proposed order, but the Commission recommended approval on 2-7-19.

⁶ See PUC Docket No. 46166, *Application of Plains Internet, LLC for Designation as an Eligible Telecommunications Carrier (ETC) for the Limited Purpose of Offering Lifeline Service* (July 14, 2016).

⁷ See attached **Exhibit A**, *Plains' 2016 Withdrawal Request*, PUC Docket No. 46166.

Designation with the FCC.⁸ At that time, Plains understood the Commission to have jurisdiction over ETC Designation for Texas.⁹

Subsequently, still operating with the understanding the FCC had jurisdiction, Plains resubmitted its application for ETC Designation in Texas with the FCC on November 13, 2018 after winning its bid for CAF funding.¹⁰ On November 28, 2018, Mr. Cliff Crouch, Manager of Licensing and Compliance at the PUC, replied to an inquiry by an employee of Plains.¹¹ In his reply Mr. Crouch informed Plains that the PUC retained jurisdiction over ETC Designation within the State of Texas.¹² After receiving that notification, Plains adjusted course again and submitted a new application for ETC Designation to the PUC on December 3, 2018.¹³

Since December, Plains has worked diligently to comply with the PUC's requirements in 16 TAC § 26.418.¹⁴ Due to several requests for supplemental information, however, Plains' designation has been delayed in Texas. After supplementing its application once and then receiving a Request for Information from PUC staff dated January 18, 2019, Plains retained The Jones Law Firm PC to assist with its ETC Designation application in Texas.¹⁵ On February 8, 2019, Plains, by and through The Jones Law Firm PC, submitted a 289-page Response to the PUC's First Request for Information to Plains Internet, LLC.¹⁶ As of February 13, 2019, the

⁸ See FCC Dkt. No. WC 09-197, *In the Matter of Telecommunications Carriers Eligible to Receive Universal Service Support, Petition of Plains Internet, LLC for Designation as an Eligible Telecommunications Carrier (ETC) Lifeline Broadband Provider (LBP)* (July 21, 2016).

⁹ See attached **Exhibit A**, *Plains' 2016 Withdrawal Request*, PUC Docket No. 46166.

¹⁰ See FCC Dkt. No. WC 09-197, *In the Matter of Telecommunications Carriers Eligible to Receive Universal Service Support, Petition of Plains Internet, LLC for Designation as an Eligible Telecommunications Carrier (ETC) Lifeline Broadband Provider (LBP)* (July 21, 2016, supp. November 13, 2018).

¹¹ See attached **Exhibit B**, e-mail exchange between Cliff Crouch of the PUC and Chris Coleman of Plains Internet, LLC (November 28, 2018).

¹² *Id.*

¹³ See PUC Docket No. 48939.

¹⁴ *Id.*

¹⁵ *Id.* at item 13 (January 18, 2019).

¹⁶ See PUC Docket No. 48939, item 15 and item 16 (February 8, 2019).

status of the Texas application is pending staff review and subsequent approval or denial by the assigned Administrative Law Judge. Pursuant to 16 TAC § 26.418(h)(2)(D), the PUC has until late June to issue its order with regard to Plains' application for ETC Designation in Texas.¹⁷

III. Grant of the Requested Limited Waiver and Extension of Time Is Warranted and Would Serve the Public Interest

Pursuant to Section 1.3 of its Rules, the Commission may waive any provision of the Rules for good cause shown or where, due to special circumstances, deviation from a rule would better serve the public interest and the Commission's purposes than strict enforcement of the Rule.¹⁸ In Plains' case, there is good cause to grant the limited waiver and extension of time for ETC Designation in Texas, and strict compliance with the FCC's February 25th deadline is contrary to the public interest.

The FCC's objective in establishing the Connect America Fund was to close "the digital divide for all Americans, including those in rural areas of our country."¹⁹ Consistent with the Commission's CAF II objectives, Plains would provide underserved consumers in rural Texas census blocks a choice through the presence of a significant, new, facilities-based competitor in the marketplace.²⁰

As an established provider of fixed terrestrial wireless telecommunications services, the Company has provided broadband services, without interruption, for over three (3) years. Plains currently provides 18,750 square miles of coverage in the Texas panhandle. This covers 18

¹⁷ 16 TAC § 26.418(h)(2)(D).

¹⁸ See 47 C.F.R. § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972)).

¹⁹ See *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, WC Dkt. No. 10-90, FCC 18-6, ¶ 1 (rel. February 1, 2018).

²⁰ For more information on the location of the awarded census block areas, see *Llano Census Block Map, Texas exhibit A*, and *Panhandle Census Block Map* in FCC Dkt. No. WC 09-197 (November 13, 2018).

counties and 31 small, rural communities, where Internet service is sparse or non-existent.

Plains' ETC Designation would facilitate the timely deployment of competitive broadband services to these small, rural communities, and thus would also meet the Commission's objective of deploying services to extremely rural, low density areas.

While the heart of Plains' WISP is in rural areas that do not have cable or other high-speed fixed line options, the Company also operates in Amarillo, Texas. Amarillo is home to 198,750 people. Designating Plains as an ETC in the rural Panhandle area generally, and Amarillo particularly, will benefit rural Americans by placing significant competitive pressure on other providers, to the benefit of consumers. Consumer benefits include: (i) greater customer choice; (ii) a new, facilities-based service offering with competitive pricing, services, and features; (iii) continued contribution to the economy through Plains' facilities and employment; and (iv) access to a region-wide network and quality, broadband services.²¹

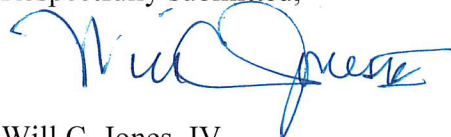
IV. Conclusion

Because Plains diligently pursued ETC Designation following its award of CAF II funding, and because it would serve the public interest, Plains, by and through its counsel, respectfully requests a limited waiver of the February 25th deadline for ETC Designation and an extension to ten (10) days following the PUC's issuance of its order approving the Company's ETC

²¹ For more information on Plains' pricing levels, see *Plains Internet, LLC's Response to Commission Staff's First Request for Information, Question Nos. Staff 1-1 through Staff 1-30*, Answer to Staff Question 1-14 (February 8, 2019), PUC Docket No. 48939.

Designation in Texas. Plains also respectfully requests expeditious Commission action on this request.

Respectfully submitted,



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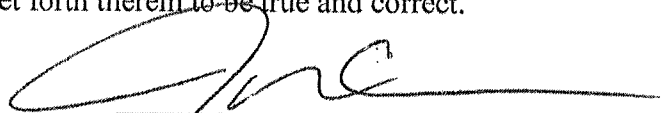
Attorney for Plains Internet, LLC

February 13, 2019

DECLARATION OF JOSEPH MONROE

I, Joseph Monroe, do hereby declare under penalty of perjury that the foregoing is true and correct:

1. I am the Owner, Director, and President of Plains Internet, LLC.
2. I have read the foregoing "Plains Internet, LLC's Request for Limited Waiver and Extension of ETC Designation Deadline." To the best of my knowledge, and upon information and belief, I believe the facts set forth therein ~~to be~~ true and correct.



Joseph Monroe, President
Plains Internet, LLC

Date: 2-13-2019

Exhibit A

Plains' 2016 Withdrawal Request, PUC Docket No. 46166

Texas Public Utilities Commission

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PUBLIC UTILITY COMMISSION
FILING CLERK

In the Matter of
Telecommunications Carriers
Eligible
To Receive Universal Service
Support

Lifeline Broadband Provider (LBP)

§ Docket NO. 46166

§

§

§

Petition of Plains Internet, LLC for
Designation as an Eligible
Telecommunications Carrier (ETC)

§

§

§

Joseph Monroe
Plains Internet
7519 Canyon Drive
Amarillo, TX 79110
806-340-7320

To: The commission

Motion to withdraw Petition for Designation as an Eligible Telecommunications
Carrier (ETC).

FCC 16-38 WC Docket NO 11-42 Lifeline Linkup and Reform Modernization, and
WC Docket NO 09-197 Telecommunication Carriers Eligible for Universal Service
Support, indicates that the Texas Utility Commission does not have jurisdiction in this
matter. Plains Internet, LLC has applied to the Federal Communication Commission
for this designation, therefore Plains Internet, LLC respectfully withdraws our petition
to the Texas Utility Commission.

Joseph Monroe

Exhibit B

E-mail exchange between PUC and Plains

From: Crouch, Cliff <Cliff.Crouch@puc.texas.gov>
Sent: Wednesday, November 28, 2018 12:14 PM
To: Chris Coleman
Cc: Corona, Connie; Kelsaw, James; Hopingardner, Diane; Oetken, Tammy
Subject: FW: Connect America Funding II

Mr. Coleman: You contacted the Public Utility Commission of Texas (commission) last week concerning the Eligible Telecommunications Carrier (ETC) designation for your company which has been awarded Connect America Funding for certain census blocks in Texas. The commission has maintained jurisdiction of these ETC designations except for commercial mobile radio service (CMRS) resellers. As stated in 16 Tex. Admin. Code § 26.418, CMRS resellers may seek designation as an ETC by the Federal Communications Commission. If you have an email of correspondence from 2016 that states otherwise, I would appreciate you sharing it with me.

We are currently processing two similar requests by two other companies in Project 48715 and Project 48719.



Cliff Crouch
Manager, Licensing and Compliance
Public Utility Commission of Texas
W: (512)936-7296 | cliff.crouch@puc.texas.gov
Sent: Tuesday, November 20, 2018 3:00 PM

From: Chris Coleman [<mailto:chris@plainsinternet.com>]
Sent: Tuesday, November 20, 2018 11:57 AM
To: Oetken, Tammy <Tammy.Oetken@puc.texas.gov>
Subject: Connect America Funding II

WARNING: EXTERNAL SENDER. Always be cautious when clicking links or opening attachments. NEVER provide your user ID or password.

We have been awarded Connect America Funding for census blocks in Texas. I contacted the Texas Public Utilities Commission in 2016 and was informed that the state does not exercise jurisdiction for designating Eligible Telecommunications Carriers for this funding.

Please let me know who to contact to get this statement.

Thank you

Chris Coleman
Plains Internet
7519 Canyon Dr
Amarillo, TX 79110
806-410-1314

Petitioners seeking an FCC ETC designation to serve non-Tribal lands must submit “an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.” The statement may take the form of a “duly authorized letter, comment, or order, from the relevant state regulatory commission or a court of competent jurisdiction, indicating that the state lacks authority to designate the carrier.” Carriers cannot rely on jurisdictional statements in past orders relating to different carriers or simply challenge the state commission’s jurisdiction in their petition directly. If a state law expressly articulates that it does not have jurisdiction over a relevant type of technology, Commission staff would consider such a statute relevant in its determination of Commission jurisdiction.