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February 12, 2015

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Attention: Wireline Competition Bureau

**Re: Big Bend Telecom, LTD Petition for Waiver of ETC Designation Deadline
Rural Broadband Experiments
WC Docket No. 10-90, WC Docket No. 14-259**

Dear Ms. Dortch:

On behalf of Big Bend Telecom, LTD (“BBT”), JSI respectfully submits the above-referenced Petition for Waiver. BBT seeks a waiver of the deadline established in the above proceeding to notify the Wireline Competition Bureau of eligible telecommunications carrier status.

Please direct inquiries regarding the BBT Petition for Waiver to the undersigned consultant for the Company.

Sincerely,

John Kuykendall
JSI Vice President
301-459-7590
jkuykendall@jsitel.com

Enclosures

cc: Ian Forbes, Telecommunications Access Policy Division

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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

EMERGENCY REQUEST FOR EXPEDITED TREATMENT

**PETITION OF BIG BEND TELECOM, LTD FOR WAIVER OF ETC DESIGNATION
DEADLINE FOR RURAL BROADBAND EXPERIMENTS**

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ Big Bend Telecom, LTD (“BBT” or the “Company”) respectfully requests waiver of the March 5, 2015 deadline to submit appropriate documentation of its eligible telecommunications carrier (“ETC”) designation in each census block for which the Company is provisionally selected to receive Rural Broadband Experiment (“RBE”) support.

BBT has worked diligently to ensure all RBE requirements are completed correctly and on time, but the Public Utility Commission of Texas (“Texas Commission”) timeframe for administratively approving the Company’s ETC designation is unfortunately going to extend for a short duration beyond March 5. BBT anticipates that the Texas Commission will issue a decision within weeks of the March 5 deadline provided that no party intervenes or requests a Hearing on the Merits under the Texas Administrative Procedures Act (“APA”). Although the FCC encouraged state commissions to adopt expedited approval processes for entities participating in

¹ 47 C.F.R. § 1.3.

the RBE, the Texas Commission, like all state agencies in Texas, is obligated to follow applicable administrative law regarding public notice and provide an opportunity for hearing, should an affected party request such. For the purpose of ETC designation and consistent with prior direction from the FCC,² the Texas Commission has adopted rules and prior precedent to prevent fraud and abuse of the universal service programs that require applicants to submit extensive documents, maps, rate plans, service descriptions, five-year network improvement plans and other evidence to support the ETC application—these items cannot be compiled quickly or hastily, and BBT did everything in its capabilities to ensure that its ETC application was filed in a timely manner.

BBT began preparing for the various obligations associated with becoming an ETC in Texas as soon as it was aware that it had been provisionally selected to receive RBE funding and began compiling such information such as securing price-cap exchange boundary maps from the Texas Commission and identifying the specific wire centers (and uncertificated areas) in which the provisionally-selected census blocks were located, creating competitive marketing strategy plans for voice service offerings, and creating five-year network improvement plans. As soon as the Company felt that it had prepared an application that sufficiently addressed the Texas Commission's strict ETC designation criteria, it submitted its ETC application to the Texas Commission on January 30, 2015. The Texas Commission acted quickly to establish a procedural

² *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-46, Report and Order at 2, (rel. Mar. 17, 2005).

schedule, which was released on February 4, 2015 (see Exhibit A).³ Furthermore, the Texas Commission staff has made a finding that the application is sufficient for review (see Exhibit B).⁴

BBT expects that the Texas Commission will do its best to comply with the procedural schedule and complete its administrative review of the application on March 16, 2015. However, due to the requirements under state law applicable to administrative proceedings before all state agencies, to the extent that an outside party intervenes and requests a hearing, the timeline for final review would have to be extended in order to protect the rights of intervenors. Just like the FCC, the Texas Commission is obligated to comply with applicable public notice and approval procedures. While the Company does not anticipate its application will be opposed by any party and become a contested case, the Company cannot guarantee that no other party will contest BBT's application. Therefore, BBT respectfully requests the Commission waive the March 5, 2015 filing deadline for provisionally-selected RBE participants to submit documentation of ETC designation.

I. GOOD CAUSE EXISTS TO GRANT PETITIONER'S REQUESTED WAIVER

In general, the FCC's rules may be waived for good cause shown.⁵ Waiver is appropriate where the "particular facts would make strict compliance inconsistent with the public interest."⁶ The FCC may grant a waiver of its rules where the requested relief would not undermine the policy

³ *Application of Big Bend, Telecom, LTD. for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. SUBST. R. 26.418 and an Eligible Telecommunications Provider Pursuant to P.U.C. SUBST. R 26.417 and P.U.C. SUBST. R. 26.423*, Docket No. 44397, Order No. 1 Docketing, Setting Procedural Schedule, Requesting Recommendation on Sufficiency of Application, (Feb. 2, 2015).

⁴ *Application of Big Bend, Telecom, LTD. for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. SUBST. R. 26.418 and an Eligible Telecommunications Provider Pursuant to P.U.C. SUBST. R 26.417 and P.U.C. SUBST. R. 26.423*, Docket No. 44397, Staff's Response to Order No. 1 (Feb. 10, 2015).

⁵ 47 C.F.R. § 1.3.

⁶ See *AT&T Wireless Services, Inc. et al. v. Federal Communications Commission*, No. 00-1304 (D.C. Cir. 2001), citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁷

The Commission likely anticipated that there would be circumstances wherein a provisional winner would not be able to provide documentation of ETC designation within the 90-day timeframe, and the Commission noted in the *Rural Broadband Experiments Order*, “a waiver of this deadline may be appropriate if a winning bidder is able to demonstrate that it has engaged in good faith to obtain ETC designation, but has not received approval within the 90-day timeframe.”⁸ BBT has engaged in good faith to obtain ETC designation from the Texas Commission. The Texas Commission requires a considerable amount of information, including a “five-year plan”⁹ which is typically only required for incumbent local exchange carriers (“ILECs”) by the FCC. As such, BBT had to compile an extensive amount of information and draft a five-year plan, prior to filing its application with the Texas Commission. Additionally, BBT discovered that the FCC’s online maps of price cap areas do not contain wire center boundaries, which the Texas Commission requires ETC applicants to identify in order to become an ETC. BBT worked with an outside vendor to obtain such boundary maps, but discovered that this vendor’s maps were also not reliable so BBT had to obtain paper copies of exchange boundary maps from the Texas Commission and transfer those boundaries into the Company’s mapping software so that it could then electronically overlay the approved census blocks in order to identify the wire centers in which BBT wished to be designated as an ETC. In order to also be eligible to receive state high cost support, BBT had to commit to offer voice service with unlimited local usage at a price that

⁷ See generally, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); see also *Northeast Cellular* (D.C. Cir. 1990).

⁸ Rural Broadband Experiments Order at 22.

⁹ P.U.C. SUBST. R. 26.402(d).

is no higher than 150% of the ILEC's tariffed rate in the same wire center so BBT had to conduct market research to identify the details of the underlying ILEC's voice service offerings. The Company also had to prepare Lifeline tariffs to submit with its application and had to identify the different discounts offered by the various underlying ILECs.¹⁰ While the Company is not yet providing service, BBT also had to prepare and submit a proposed Lifeline marketing brochure.

Under Texas rules, an application for ETC designation cannot be approved any earlier than 30 days after the filing date of a sufficient application or 30 days after public notice is completed in the *Texas Register*, whichever is later.¹¹ The Company anticipates that notice will be published in the *Texas Register* on February 13, 2015, two weeks after it submitted its application to the Texas Commission. BBT worked diligently to prepare the necessary information such that it could file a sufficient application with the Texas Commission but due to the applicable procedural rules, the Texas Commission's procedural schedule set the projected completion date for administrative approval shortly after the FCC deadline.

The FCC has good cause to grant BBT's petition and extend the deadline to ensure that the Texas Commission can follow its own procedural schedule to make a decision on the application. The Texas Commission's proposed date for completing its administrative review of BBT's application is March 16, 2015 (see Exhibit A). An 11-day delay from the original deadline will not complicate the FCC's RBE schedule, especially since a second round of provisional winners has not even been announced as of February 12, 2015. These additional provisional winners will still have to go through the process of filing a letter of credit

¹⁰ Pursuant to P.U.C. SUBST. R. 26.412(f)(1), the Texas Commission has implemented a Lifeline Area Discount that is equal to 25% of the underlying ILEC rate increases occurring after a specified date. As ILECs have raised rates by varying amounts since this rule was implemented, state discounts vary by ILEC (and sometimes by wire center).

¹¹ P.U.C. SUBST. R. 26.418(f)(2)(A)(i).

commitment letter and ETC designation documentation. The FCC has good cause to grant BBT waiver of the March 5 deadline as the company has put forth a considerable amount of time and resources into its Texas Commission ETC application, and the proposed procedural timeline for the Texas Commission is not significantly longer than the FCC's timeline for the initially selected RBE projects.

Granting BBT's petition is in the public interest as well. BBT's proposed RBE projects will serve *extremely* remote and high cost areas of the Trans Pecos region in western Texas. This service area has inhospitable geography, weather, and an extremely low population density. Nevertheless, BBT is well experienced in serving the difficult-to-reach locations in this region, and despite the difficult terrain and low population density, the Company felt that the RBE provided a good opportunity for the Company to deploy in areas that have absolutely no business case for investment absent considerable support.

II. CONCLUSION

BBT has been enthusiastic about, and committed to, the RBE since it was first announced in early 2014, and saw it as an opportunity to expand service to extremely remote customers who need broadband. It is in the public interest to waive the March 5 deadline for BBT so that the Company can secure the necessary ETC designation from the Texas Commission.

Respectfully submitted,



Russell A. Moore
General Manager / COO
Big Bend Telecom, Ltd.
808 North 5th Street
Alpine, Texas 79830

Filed February 12, 2015

EXHIBIT A

DOCKET NO. 44397

RECEIVED

APPLICATION OF BIG BEND §
TELECOM, LTD. FOR DESIGNATION §
AS AN ELIGIBLE §
TELECOMMUNICATIONS CARRIER §
PURSUANT TO P.U.C. SUBST. R. 26.418 §
AND AN ELIGIBLE §
TELECOMMUNICATIONS PROVIDER §
PURSUANT TO P.U.C. SUBST. R. § 26.417 §
AND P.U.C. SUBST. R. § 26.423 §
§

2015 FEB 13 10:41 AM
PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK

**ORDER NO. 1
DOCKETING, SETTING PROCEDURAL SCHEDULE, REQUESTING
RECOMMENDATION ON SUFFICIENCY OF APPLICATION**

I. Background

On January 30, 2015, Big Bend Telecom, Ltd. (Big Bend or the Company) filed an application for designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.418, as well as designation as an eligible telecommunications provider (ETP) under PURA¹ § 56.023 and P.U.C. SUBST. R. 26.417 and 26.423. The Commission designates qualified carriers as ETCs and ETPs pursuant to 47 U.S.C. § 214(e)(2) and PURA § 56.023. The Company requests ETC/ETP designation to be eligible for federal and state universal service funds.

The Company seeks ETC/ETP designation within certain Non-Rural Service Areas as that term is defined in P.U.C. SUBST. R. 26.418(c)(2), and within certain uncertificated areas identified in Attachments C and D to the application. The Company holds Service Provider Certificate of Operating Authority No. 60922.

II. Sufficiency of Application and Waiver Request

The Commission will provide notice by publication in the *Texas Register* on February 13, 2015. The proceeding is docketed for further processing. If the application is found sufficient,

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2014) (PURA).

the procedural schedule below shall apply. If the application is found insufficient, the timelines in P.U.C. SUBST. R. 26.417(f)(2)(D) and P.U.C. SUBST. R. 26.418(h)(2)(D) shall apply.

The Company is requesting a waiver of the requirement of P.U.C. SUBST. R. 26.417(c)(1)(A), which requires that an applicant for designation as an ETP be previously designated as an ETC, to allow the processing of both applications simultaneously.

By **February 10, 2015**, Commission Staff shall, and interested parties may, file comments on the sufficiency of the Company's application and the proposed notice. The Company indicated that service of the application was provided to the Office of Public Utility Counsel.

III. Procedural Schedule

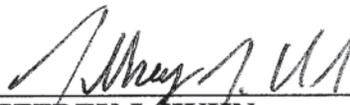
Pursuant to §§ 26.417(f)(2)(A)(i) and 26.418(g)(2)(A)(i), the effective date shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later. The Company requested an effective date 30 days after completion of notice in the *Texas Register*. If the application and notice are deemed sufficient, the following procedural schedule shall apply:

Commission Staff recommendation on sufficiency of application	February 10, 2015
Order Addressing Sufficiency of Application	February 13, 2015
<i>Texas Register</i> notice completed	February 13, 2015
Deadline for interested parties to comment/file intervention	March 5, 2015
<i>If Qualified for Informal Disposition:</i>	
Deadline for Commission Staff to request a hearing on the merits; deadline for Commission Staff recommendation on final disposition, if no hearing requested	March 9, 2015
Deadline for Applicant to request a hearing or respond to Intervenor comments and Staff recommendation on final disposition	March 12, 2015
If applicable, administrative review completed effective date	March 16, 2015

This case is anticipated to be processed administratively if there are no motions to intervene, no protest letters, and no requests for a hearing on the merits.

SIGNED AT AUSTIN, TEXAS the 4th day of February 2015.

PUBLIC UTILITY COMMISSION OF TEXAS



JEFFREY J. HUHN
ADMINISTRATIVE LAW JUDGE

EXHIBIT B

DOCKET NO. 44397

APPLICATION OF BIG BEND	§	PUBLIC UTILITY COMMISSION
TELECOM, LTD. FOR DESIGNATION	§	
AS AN ELIGIBLE	§	OF TEXAS
TELECOMMUNICATIONS CARRIER	§	
PURSUANT TO P.U.C. SUBST. R. 26.418	§	
AND AN ELIGIBLE	§	
TELECOMMUNICATIONS PROVIDER	§	
PURSUANT TO P.U.C. SUBST. R. §	§	
26.417 AND P.U.C. SUBST. R. § 26.423	§	

STAFF'S RESPONSE TO ORDER NO. 1

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Response to Order No. 1, and would show the following:

I. Background

On January 30, 2015, Big Bend Telecom, Ltd. (Big Bend or the Company) filed an application for designation as an eligible telecommunications carrier (ETC) under 47 U.S.C § 214(e) and P.U.C. SUBST. R. 26.418, as well as designation as an eligible telecommunications provider (ETP) under PURA¹ § 56.023 and P.U.C SUBST. R. 26.417 and 26.423. The Commission designates qualified carriers as ETCs and ETPs pursuant to 47 U.S.C. § 214(e)(2) and PURA § 56,023.

The Company requests ETC/ETP designation to be eligible for federal and state universal service funds. The Company seeks ETC/ETP designation within certain Non-Rural Service Areas as that term is defined in P.U.C. SUBST. R. 26.418(c)(2), and within certain uncertificated areas identified in Attachments C and D to its application. The Company holds Service Provider Certificate of Operating Authority No. 60922. The Company also request a waiver of the requirement of P.U.C. SUBST. R. 26.417(c)(I)(A), which requires that an applicant for designation as an ETP be previously designated as an ETC, to allow the processing of both applications simultaneously.

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2014) (PURA).

On February 4, 2015, Order No. 1 established an effective date of March 16, 2015 and advised that the Commission would provide *Texas Register* notice on February 13, 2015. Order No. 1 also required Staff to file comments on the sufficiency of the Company's application and the proposed notice by February 10, 2015. Therefore, this response is timely filed.

II. Sufficiency of the Application and Notice

Based on the attached memorandum from Kristin Abbott, Utility Specialist in the Competitive Markets Division, Staff finds the application to be sufficient for further review. Additionally, Staff finds the proposed notice sufficient and recommends that Big Ben's waiver be granted. These recommendations do not address the merits of the application. Such a recommendation will be filed according to the procedural schedule set forth in Order No. 1.

III. Conclusion

Staff respectfully requests that an order be issued consistent with this Response.

Dated: February 10, 2014

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director – Legal Division

Karen S. Hubbard
Managing Attorney – Legal Division



Ralph J. Daigneault
Attorney-Legal Division
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Public Utility Commission of Texas
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P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on February 10, 2015, in accordance with P.U.C. Procedural Rule 22.74.



Ralph J. Daigneault

Public Utility Commission of Texas

Memorandum

TO: Ralph Daigneault – Attorney, Legal Division

FROM: Kristin Abbott - Utility Specialist, Competitive Markets Division *KA*

DATE: February 10, 2015

RE: **Docket No. 44397** – *Application of Big Bend Telecom, Ltd. for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. SUBST. R. 26.418 and an Eligible Telecommunications Provider Pursuant to P.U.C. SUBST. R. 26.417 and P.U.C. SUBST. R. 26.423*

Recommendation
Regarding Sufficiency of ETC/ETP Application

Background

On January 30, 2015, Big Bend Telecom, Ltd. (Big Bend or the Company) filed with the Public Utility Commission of Texas (Commission) an application for designation as an eligible telecommunications carrier (ETC) pursuant to 47 U.S.C. §214(e) and P.U.C. SUBST. R. 26.418 and as an eligible telecommunications provider (ETP) pursuant to P.U.C. SUBST. Rs. 26.417 and 26.423. Big Bend requests ETC designation in order to be eligible for federal universal service funds pursuant to the Federal Communication Commission's (FCC) *Rural Experiments Order*.¹ Big Bend requests ETC and ETP designation in the census blocks for which it has been provisionally selected by the FCC in its bidding process as well as throughout the entire Valentine wire center.

On February 4, 2015, Order No. 1, *Docketing, Setting Procedural Schedule, Requesting Recommendation on Sufficiency of Application*, was issued. Order No. 1 established an effective date of March 16, 2015 and advised that the Commission would provide *Texas Register* notice on February 13, 2015. Order No.1 also established March 5, 2015 as the deadline for interested

¹ WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014) ("*Rural Experiments Order*").

parties to file comments or request to intervene in the proceeding. Order No.1 established the deadline for Commission Staff's recommendation on the sufficiency of the application as February 10, 2015. Therefore, this recommendation is timely filed.

In its application, Big Bend requested a waiver to allow processing of its application to amend its ETC designation simultaneously with the ETP application so as to comply with the provisions of P.U.C. SUBST. R. 26.417(f)(1)(B)(i)(II).² I recommend that this waiver request for the simultaneous processing of the ETC and ETP application in this docket be granted.

Recommendation

I have reviewed Big Bend's application and find that it is *sufficient* for further review. Furthermore, I recommend that Big Bend's waiver be *granted* as discussed above.

² Application at 8-9.