

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

PETITION OF
Michael D. Donnell d/b/a SAN JOAQUIN BROADBAND
FOR WAIVER OF ETC DESIGNATION DEADLINE

To: Wireline Competition Bureau

Michael D. Donnell dba SAN JOAQUIN BROADBAND ("SJB") pursuant to Section 1.3 of the rules of the Federal Communications Commission ("FCC" or "Commission"),¹ 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 entity is provisionally selected to receive Rural Broadband Experiment ("RBE") support ("ETC Designation Deadline").

Acting in good faith, on December 18, 2014, SJB applied for designation as an ETC from the State of California Public Utilities Commission ("CPUC") for its affiliate SJB LLC dba SAN JOAQUIN BROADBAND ("SJB LLC"). SJB LLC is the affiliate within SJB through which SJB will meet its broadband public interest obligations required by the Commission.² However, on February 23, 2015, the CPUC replied that the CPUC lacks jurisdiction to designate SJB LLC as

¹ 47 C.F.R. § 1.3.

² http://transition.fcc.gov/wcb/FAQ_Rural_Broadband_Experiment.pdf (last viewed Mar 3, 2015) ("RBE FAQ v2") at VI. Conditions for Funding ¶C.

an ETC in the State of California.³ SJB LLC has now petitioned the FCC for the required ETC designation.⁴

I. BACKGROUND AND INTRODUCTION

Section 214(e)(6) of the Communications Act of 1934, as amended ("Act") grants the FCC authority to designate a carrier as an ETC when such carrier is "not subject to the jurisdiction of a state commission."⁵

On December 18, 2014, SJB LLC filed a request with the CPUC for an ETC designation in California. Instead of granting the requested ETC designation, the CPUC staff member handling SJB LLC's request instructed SJB to write a letter to the CPUC Legal Division requesting a statement that the CPUC has not exerted jurisdiction over VoIP (Voice over Internet Protocol) or WISP (Wireless Internet Service Provider) operators. As instructed, SJB LLC submitted a letter with this request to the CPUC Legal Division on January 14, 2015.

Subsequently, 35 days later, on February 23, 2015, the CPUC responded with a letter stating that

“the [CPUC] has not asserted jurisdiction over WISPs, and is barred by state law from exercising jurisdiction over VoIP providers. Specifically, Public Utilities Code Section 710 states that “the commission shall not exercise regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled services” except as “required” by federal law or expressly directed to do so by state statute.”⁶

³ Petition of SJB LLC dba SAN JOAQUIN BROADBAND for Designation as an Eligible Telecommunications Carrier in the State of California, WC Docket Nos. 09-197, 10-90, 14-259 (filed Mar. 5, 2015) (“SJB LLC Petition for ETC Designation”) at Exhibit A - Letter from CPUC Evidencing State of California Lacks Jurisdiction.

⁴ SJB LLC Petition for ETC Designation.

⁵ 47 U.S.C. § 214(e)(6).

⁶ SJB LLC Petition for ETC Designation at Exhibit A - Letter from CPUC Evidencing State of California Lacks Jurisdiction.

In short, the CPUC has found that it does not hold authority to grant SJB LLC the requested ETC status. In accordance with the CPUC's decision, SJB has requested that the Commission exercise its statutory authority under Section 214(e)(6) of the Act to grant the petition for ETC designation that has been submitted by SJB LLC to the Commission⁷. To allow the Commission the time necessary to make the said designation, SJB respectfully requests that the Wireline Competition Bureau extend the ETC Designation Deadline to a reasonable date.

I. GOOD CAUSE EXISTS TO GRANT REQUESTED WAIVER

In general, the FCC's rules⁸ may be waived for good cause shown.⁸ Waiver is appropriate where the "particular facts would make strict compliance inconsistent with the public interest."⁹ The FCC may grant a waiver of its rules where the requested relief would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹⁰

The Commission anticipated that there likely 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

⁷ SJB LLC Petition for ETC Designation.

⁸ 47 C.F.R. § 1.3.

⁹ 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").

¹⁰ 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).

engaged in good faith to obtain ETC designation, but has not received approval within the 90-day timeframe.”¹¹ Specifically, the Commission states the following:

“We expect entities selected for funding to submit their ETC applications to the relevant jurisdiction as soon as possible after release of the public notice announcing winning bids, and will presume an entity to have shown *good faith* if it files its ETC application within *15 days* of release of the public notice.”¹² (emphasis added)

SJB has worked in good faith to establish an ETC designation in the San Joaquin Valley of California, making its application request to the CPUC within 13 days of the release of the public notice, only to later get a response that the CPUC lacks the authority to grant such designation. SJB recently received the official notice from the CPUC and is now working with the FCC to obtain ETC designation in the State of California.¹³

II. CONCLUSION

SJB has demonstrated good faith and has consistently committed its resources to the fullest extent to meet the deadlines established for the RBE. It is in the public interest to waive the March 5 deadline for SJB so that its affiliate, SJB LLC, can secure the necessary ETC designation from the FCC and move forward to bring affordable and reliable broadband to unserved rural areas.

¹¹ *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014) (“Rural Broadband Experiments Order”) at ¶22.

¹² *Id.* at 10, note 52.

¹³ SJB LLC Petition for ETC Designation.

Respectfully submitted,

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Dated: March 5, 2015