

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Rural Broadband Experiments	)	WC Docket No. 14-259

**PETITION FOR WAIVER AND REQUEST FOR EXTENSION OF TIME TO FILE  
PROOF OF ETC DESIGNATION OF NORTHEAST RURAL SERVICES, INC.**

Northeast Rural Services, Inc. (“NRS”) hereby respectfully petitions the Federal Communications Commission (the “Commission”), pursuant to 47 C.F.R. § 1.3, for a waiver and extension of the deadline in the above-captioned proceeding, requiring the submission of proof of designation as an Eligible Telecommunications Carrier (“ETC”) by June 2, 2015.<sup>1</sup> For the reasons explained herein, good cause exists to grant the relief requested with respect to this requirement.

**I. FACTS.**

On December 19, 2014, NRS filed an application with the Oklahoma Corporation Commission (“OCC”) for an ETC designation in Oklahoma (the “Application”).<sup>2</sup> NRS independently engaged an engineering firm to assist in determining whether any of the census blocks were served, either partially or entirely, by companies other than the ILEC AT&T. This review revealed that some of the covered census blocks may be served, at least in part if not

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<sup>1</sup> See Wireline Competition Bureau Announces Additional Provisionally Selected Bidders for Rural Broadband Experiments and Sets Deadlines for Submission of Additional Information, WC Docket Nos. 10-90, 14-259, Public Notice, DA 15-288 (Wireline Comp. Bur. Rel. Mar. 4, 2015)(“Public Notice”) at 2.

<sup>2</sup> *Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, CAUSE NO. PUD 201400359, Application of Northeast Rural Services, Inc., before the Oklahoma Corporation Commission (Dec. 19, 2014). The Application is attached as Exhibit 1.

entirely, by either Chouteau Telephone Company d/b/a FairPoint Communications (“Chouteau”) or CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink (“CenturyTel”). Chouteau and CenturyTel are both rural telephone companies as defined in 47 U.S.C. § 153(44).

On January 29, 2015, NRS filed a supplement to its Application to include the Chouteau and CenturyTel service areas within its request for ETC designation.<sup>3</sup> CenturyTel indicated to NRS that it would not oppose NRS’s application for ETC designation, but Chouteau expressed some opposition. NRS and the OCC’s Public Utility Division (“PUD”) agreed upon a procedural schedule where the final hearing on NRS’s Application would be on February 27, 2015. This date was selected because it would give the OCC sufficient time to grant NRS’s Application and allow NRS to meet the March 5, 2015 deadline to provide the FCC with proof of its ETC designation. The PUD initially indicated that the February 27 date was acceptable; however on February 11, 2015 the PUD informed NRS that February 27 was unacceptable for final hearing because the PUD was no longer willing to expedite the ETC process when it involved a rural telephone company. To move forward with as much of its Rural Broadband Experiments project as possible, NRS dismissed Chouteau and CenturyTel service areas from the Application,<sup>4</sup> and promptly refiled new applications for the Chouteau and CenturyTel service areas (respectively the “Chouteau Application” and the “CenturyTel Application”).<sup>5</sup> On March 4, 2015, the OCC

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<sup>3</sup> *Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, CAUSE NO. PUD 201400359, Amendment to Application of Northeast Rural Services, Inc., before the Oklahoma Corporation Commission (Jan. 29, 2015). Supplement attached as Exhibit 2.

<sup>4</sup> *Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, CAUSE NO. PUD 201400359, Dismissal of Interested Parties Without Prejudice, before the Oklahoma Corporation Commission (Feb. 12, 2015). Dismissal attached as Exhibit 3.

<sup>5</sup> *Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, CAUSE NO. PUD 201500079, Application of Northeast Rural Services, Inc. for Designation as an Eligible

granted the Application.<sup>6</sup> NRS promptly submitted proof of its ETC designation in the AT&T exchanges, but was forced to file a Petition for Waiver with the Commission regarding the Chouteau and CenturyTel study areas.<sup>7</sup>

Also on March 4, 2015, the Commission announced that NRS was one of the second round of provisionally selected recipients for funding via the Rural Broadband Experiments.<sup>8</sup> NRS continued to work with the PUD, Chouteau and CenturyTel to obtain designation as an ETC in the Chouteau and CenturyTel study areas. On March 12, NRS filed Motions for Procedural Schedule, and hearings on the Procedural Schedules were set for March 26. Despite NRS's good faith efforts, the OCC has not scheduled a date to rule on the Chouteau Application or the CenturyTel application, the OCC has not yet issued a procedural order outlining the dates when such a ruling can be expected; the recommendation for a final hearing was June 25 for the CenturyTel Application and July 2 for the Chouteau Application, but these dates were not confirmed in a Procedural Schedule. These dates are further called into question because PUD

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Telecommunications Carrier in the Study Area of Chouteau Telephone Company d/b/a FairPoint Communications, before the Oklahoma Corporation Commission (Feb. 20, 2015). Chouteau Application attached as Exhibit 4. *Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, CAUSE NO. PUD 201500081, Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier in the Study Area of CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink, before the Oklahoma Corporation Commission (Feb. 20, 2015). CenturyTel Application attached as Exhibit 5.

<sup>6</sup> *Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, CAUSE NO. PUD 201400359, Final Order Designating Northeast Rural Services, Inc. as an Eligible Telecommunications Carrier, Order No. 637332, before the Oklahoma Corporation Commission (Mar. 4, 2015).

<sup>7</sup> *Connect America Fund, Rural Broadband Experiment*, WC Docket Nos. 10-90, 14-259, Petition of Northeast Rural Services, Inc. for Extension of Time and/or Waiver of ETC Designation Deadline for Rural Broadband Experiments, before the Federal Communications Commission (Mar. 4, 2015).

<sup>8</sup> *Id.*

filed Motions to Suspend Cause on May 21, 2015. The deadline for NRS to submit confirmation of its designation as an ETC for this second round is June 2, 2015.<sup>9</sup> Based on the foregoing, it is apparent that NRS will not be able to obtain an ETC designation from the OCC prior to the June 2 deadline.

## **II. DISCUSSION.**

Pursuant to 47 C.F.R. § 1.3, the Commission may suspend, revoke, amend or waive its rules upon the showing of good cause.<sup>10</sup> Good cause exists to waive the ETC requirement for a short time because NRS diligently pursued its ETC designation. It is through no fault of NRS that it is unable to provide the required confirmation of ETC designation; NRS has worked tirelessly to attempt to move these dockets along, but is meeting significant resistance from the PUD and Chouteau Telephone Company.

The Rural Broadband Experiment Order (“RBE Order”) states that entities applying for Rural Broadband Experiment funding were not required to be an ETC at the time of application, but could seek ETC designation after being selected.<sup>11</sup> Relying on this language, NRS did not seek designation as an ETC at the time of its application. The RBE Order also states that entities selected for funding must confirm their ETC status within 90 days of the Public Notice

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<sup>9</sup> See *Public Notice* at 2 (“Within 90 days of this Public Notice, by Tuesday, June 2, 2015, at 11:59p.m. EST, the bidders identified in the Attachment are required to upload to the FCC Form 5620 appropriate documentation of their designation as an eligible telecommunications carrier (ETC) in all areas for which they will receive support.”).

<sup>10</sup> 47 C.F.R. § 1.3.

<sup>11</sup> *Connect America Fund, ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98 (rel. July 14, 2014) (“*RBE Order*”) at para. 22 (“We remind entities that they need not be ETCs at the time they initially submit their formal proposals for funding through the rural broadband experiments, but that they must obtain ETC designation after being identified as winning bidders for the funding award.”).

announcing their selection or default and forfeit its award.<sup>12</sup> However, the Commission noted that a waiver of the 90-day deadline may be appropriate if a provisionally selected entity can demonstrate it has engaged in good faith to obtain ETC designation but has not yet received approval.<sup>13</sup>

NRS first began discussing its need for an ETC designation with the PUD on December 18, thirteen (13) days after the release of the first public notice provisionally selecting NRS to receive Rural Broadband Experiment funding, and nearly three (3) months before the second public notice. NRS's ETC application is still pending with the State of Oklahoma. NRS acted immediately to obtain its ETC designation, well within its obligation to act in good faith as defined by the Commission.

NRS would prefer to work through the OCC process to receive its ETC designation. However, the OCC has not issued an order indicating when a final hearing on NRS's Petitions will take place, making it impossible for NRS to comply with Commission deadlines. NRS will likely prepare an ETC application for the Commission to consider for these study areas.<sup>14</sup> The Commission determined that expediting the deployment of broadband is a public policy

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *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 (July 14, 2014) ("*Rural Broadband Experiments Order*") at para. 23 ("We now conclude that, for purposes of this experiment, if after 90 days a state has failed to act on a pending ETC application, an entity may request that the Commission designate it as an ETC, pursuant to section 214(e)(6). Although we are confident that states share our desire to work cooperatively to advance broadband, and we expect states to expeditiously designate qualified entities that have expressed an interest in providing voice and broadband to consumers in price cap areas within their states, we also recognize the need to adopt measures that will provide a pathway to obtaining ETC designation in situations where there is a lack of action by the state.").

priority.<sup>15</sup> NRS is anxious to provide access to robust broadband to as many Oklahomans as possible as soon as practicable. Resolving this ETC issue remains a critical step to achieving this goal.

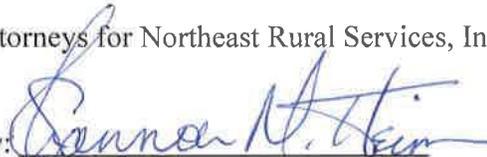
### III. CONCLUSION.

NRS acted in good faith by filing its ETC application with the OCC multiple months before the public notice where it was provisionally selected to receive additional Rural Broadband Experiment funds, but the OCC has not yet issued an order granting either of NRS's Applications in the Chouteau and CenturyTel study areas. The RBE Order stated that a waiver of the 90-day deadline would be appropriate in situations where the applicant has acted in good faith. NRS respectfully submits that good cause exists and asks the Commission to grant its Request for Waiver and Extension of Time.

Respectfully submitted,

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<sup>15</sup> See, generally, *Rural Broadband Experiments Order*.

**EXHIBIT 1**

**NRS APPLICATION FOR ETC DESIGNATION**

REPLACEMENT FOR FAX FILED ON  
**DEC 19 2014**  
FILED / RECEIVED

**DEC 22 2014**  
COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

APPLICATION OF NORTHEAST RURAL )  
SERVICES, INC. FOR DESIGNATION AS )  
AN ELIGIBLE TELECOMMUNICATIONS )  
CARRIER PURSUANT TO THE )  
TELECOMMUNICATIONS ACT OF 1996 )

CAUSE NO. PUD 201400359

**APPLICATION OF NORTHEAST RURAL SERVICES, INC.  
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

Northeast Rural Services, Inc. ("NRS"), by its attorneys, hereby submits this Application for designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended ("Act"),<sup>1</sup> Part 54 of the Federal Communications Commission ("FCC") Regulations,<sup>2</sup> Art. IX, Sec. 18 *et seq.* of the Oklahoma Constitution, and Section 165:59-3-14(e) of the Oklahoma Corporation Commission ("OCC") Regulations.<sup>3</sup> NRS requests that it be designated as eligible to receive all available support from the federal Universal Service Fund ("USF") support mechanisms, including the Connect America Fund ("CAF") (rural broadband experiment and Phase II support in price cap areas) along with support for low income customers throughout the geographic area specified in this Application. In support of this Application, NRS submits the following:

**I. APPLICANT**

On September 12, 2013, the OCC issued NRS a certificate of convenience and necessity to provide data-only telecommunications throughout the State of Oklahoma.<sup>4</sup> NRS is an Oklahoma corporation providing data-only telecommunications to its customers in Oklahoma. NRS's designated representative is Sheila Allgood, P.O. Box 399, Vinita, OK 74301, (918) 256-

<sup>1</sup> 47 U.S.C. § 214(e)(2).

<sup>2</sup> 47 C.F.R. Part 54.

<sup>3</sup> Okla. Admin. Code § 165:59-3-14(e).

<sup>4</sup> OCC Order Number 615809, Cause Number 201200015



9441. NRS's attorneys are Logan and Lowry, LLP (Attn: Michael T. Torrone), 101 South Wilson Street, P.O. Box 558, Vinita, OK 74301, (918) 256-7511.

## II. ALLEGATION OF FACTS

NRS submitted a bid for CAF Phase II rural broadband experiment support in price cap areas to deploy new, robust broadband to potential Oklahoma consumers.<sup>5</sup> The FCC awarded NRS \$1,029,274.00 to provide services in Craig, Delaware, Ottawa and Mayes counties in the State of Oklahoma. As stated in the *Tech Transition Order*,<sup>6</sup> the FCC requires NRS to be designated as an ETC within ninety (90) days of the award date. Thus, as a condition of receiving this funding, NRS must confirm its status as an ETC on or before March 5, 2015.<sup>7</sup> Accordingly, NRS respectfully requests that the OCC expeditiously approve this Application for ETC designation so that NRS may utilize CAF Phase II support to provide broadband and USF supported services to rural Oklahoma.

In its *USF/ICC Transformation Order*,<sup>8</sup> the FCC made sweeping changes to federal universal service support mechanisms. One of the most significant changes was the creation of the CAF, which the FCC created to ultimately replace all of the FCC's current high cost support mechanisms. In addition, the FCC expanded the purpose of universal service to increase the availability of broadband service to unserved and remote areas. In areas served by price cap carriers, the FCC introduced CAF support for broadband in two phases. During the first phase, legacy high cost support to price cap carriers was frozen and carriers electing to receive additional funding were required to extend broadband service to additional unserved locations

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<sup>5</sup> See *Report and Order and Further Notice of Proposed Rulemaking*, FCC 14-98 at ¶ 1 (Adopted: July 11, 2014) ("Rural Broadband Experiment Order").

<sup>6</sup> *Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative*, FCC 14-5 at ¶ 118 (Adopted: January 30, 2014) ("Tech Transition Order").

<sup>7</sup> See *Rural Broadband Experiment Order* at ¶ 22.

<sup>8</sup> *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 (Adopted October 27, 2011).

for every \$775 in incremental support. During Phase II, support is subject to the price cap carrier's commitment to deploy broadband on the state level, which allows the price cap carrier to receive funding based on an FCC cost model. Where the price cap carrier declines the state-level commitment, the FCC decided to implement competitive bidding in order to distribute support in a way that maximizes the extent of robust, scalable broadband service. NRS's current ETC application involves funds to be distributed under CAF Phase II, and specifically the rural broadband experiment.

Universal service is a primary goal of the OCC's telecommunications policy, just as universal service is a primary aim of the FCC.<sup>9</sup> Section 214(e)(2) of the Act provides the OCC federally delegated authority to designate NRS as an ETC. Federal law requires an entity seeking designation as an ETC to, throughout the service area which the entity seeks the ETC designation, "offer the services supported by Federal universal support mechanisms under [Section 254(c) of the Act] either using its own facilities or a combination of its own facilities and resale of another carrier's services" in addition to advertising "the availability of such services and the charges therefore using media of general distribution."<sup>10</sup> Further, if the common carrier's proposed service territory is currently serviced by a rural telephone company, the OCC must find the ETC designation is in the public interest.<sup>11</sup>

The FCC has adopted minimal rules for state commission ETC designations, and these rules implement the provisions of Section 214(e) of the Act.<sup>12</sup> In Oklahoma, the OCC echoed these requirements when adopting a rule requiring telecommunications service providers who

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<sup>9</sup> Okla. Admin. Code § 165:55-17-19; *See* 47 U.S.C. § 254(b).

<sup>10</sup> 47 U.S.C. § 214(e)(1).

<sup>11</sup> 47 U.S.C. § 214(e)(2).

<sup>12</sup> *See* 47 C.F.R. § 54.201.

seek federal funding to meet the requirements of 47 U.S.C. § 214(e).<sup>13</sup> The FCC determined that a state commission “shall . . . designate a common carrier that meets the requirements of [47 C.F.R. § 54.201(d)]” as an ETC.<sup>14</sup> The above-referenced requirements incorporate, but do not add to, the requirements discussed in the previous paragraph encompassed within 47 U.S.C. § 214(e).

A. NRS will offer services supported by federal universal service support mechanisms

NRS’s potential use of funds received pursuant to the CAF Phase II will be used pursuant to NRS’s role as a telecommunications carrier, as defined in 47 U.S.C. § 153(44) and 47 C.F.R. § 54.5.<sup>15</sup> NRS would offer the supported services on a non-discriminatory basis to its potential customers, and thus would be a common carrier eligible for designation as an ETC.

In order to receive CAF support, an ETC must offer voice telephony services, which term encompasses: “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 emergency services provided by local government or other safety organizations, such as 911 and enhanced 911, [to the extent implemented in the area]; and toll limitation services to qualifying low-income customers . . . .”<sup>16</sup> NRS will satisfy these requirements with its proposed voice and broadband offerings.

B. NRS will offer the supported services using its own facilities or a combination of its own facilities and resale of another carrier’s services

Federal law requires an ETC to provide supported services using its own facilities and a combination of another carrier’s facilities.<sup>17</sup> Though, “a telecommunications carrier is not

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<sup>13</sup> Okla. Admin. Code § 165:59-3-14(e).

<sup>14</sup> 47 C.F.R. § 54.201(b).

<sup>15</sup> NRS will seek expanded authority under its current data-only CCN if such authority is necessary.

<sup>16</sup> 47 C.F.R. § 54.201.

<sup>17</sup> 47 U.S.C. § 214(e)(1)(A).

eligible for support if the carrier offers the supported services exclusively through the resale of another carrier's services."<sup>18</sup> NRS plans to construct its own facilities to provide supported services with its rural broadband experiment grant.

C. NRS will advertise the availability and charges for NRS's services using media of general distribution

An ETC must "advertise the availability of [the supported services it will offer] and the charges therefor using media of general distribution"<sup>19</sup> NRS intends to advertise its proposed services through multiple mediums, which may include, but not be limited to, the Internet, newspapers, billboards, television and radio commercials, direct mailings, public displays, and bill inserts, amongst other available mediums.

D. NRS will provide supported services in the exchanges of Southwestern Bell Telephone d/b/a AT&T Exchanges

The ability of a common carrier to operate as an ETC is limited to operations in the "service area designated by the State commission."<sup>20</sup> NRS seeks designation as an ETC in the exchanges of price cap carrier Southwestern Bell Telephone d/b/a AT&T more particularly described in Attachment A hereto and incorporated herein by reference. NRS requests the OCC not designate NRS as a carrier of last resort, an obligation the FCC has stated is not required under its rural broadband experiment.<sup>21</sup>

E. NRS will comply with all USF requirements not specifically enumerated herein

In the Technology Transitions Order<sup>22</sup> and the Rural Broadband Experiments Order,<sup>23</sup> as reflected in applicable regulations,<sup>24</sup> the FCC established, eliminated and modified various rules

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<sup>18</sup> 47 C.F.R. § 54.201(i).

<sup>19</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>20</sup> 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.207.

<sup>21</sup> FAQs for Rural Broadband Experiments at § III(C).

<sup>22</sup> See *Technology Transition Order*.

<sup>23</sup> See *Rural Broadband Experiments Order*.

<sup>24</sup> 47 C.F.R. Part 54.

and procedures applicable to ETCs in order to craft rules for the CAF Phase II. While not specifically applicable to the statutory and regulatory prerequisites to state-based ETC designation, NRS is aware of and will comply with applicable USF requirements.<sup>25</sup>

### **III. LEGAL AUTHORITY**

The OCC has the legal authority to grant the relief requested herein pursuant to 47 U.S.C. § 214(e); 47 C.F.R. Part 54; Art. IX, Sec. 18, *et seq.*, of the Oklahoma Constitution, and Okla. Admin. Code § 165:59-3-14(e).

### **IV. RELIEF REQUESTED**

For the reasons set forth above, and pursuant to Section 214(e) of the federal Telecommunications Act of 1934, as amended, Part 54 of the Federal Communications Commission Regulations, Art. IX, Sec. 18 *et seq.* of the Oklahoma Constitution, and Section 165:59-3-14(e) of the Oklahoma Corporation Commission Regulations, NRS requests that the OCC enter an Order designating NRS as an ETC, as set forth herein, eligible to receive all available support from the federal USF support mechanisms, including the CAF (rural broadband experiment and Phase II support in price cap areas) along with support for low income customers throughout the geographic area specified in this Application. NRS further respectfully requests that the OCC enter its Order at the earliest possible date and grant NRS such other relief as the OCC may deem proper.

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<sup>25</sup> See e.g. *Rural Broadband Experiment Order* at ¶¶ 73-75 (Build Out Requirements), 82 (Certification), 85 (Record Retention).

DATED this 19th day of December, 2014.

Respectfully Submitted,

Northeast Rural Services, Inc.

By:



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**EXHIBIT A – EXCHANGES**

Southwestern Bell Telephone d/b/a AT&T Exchanges

Claremore  
Chelsea  
Vinita  
Pryor  
Ketchum  
Afton  
Fairland  
Grove  
Miami  
South Chetopa  
Picher  
Commerce  
Quapaw  
Nowata

**CERTIFICATE OF MAILING**

On this 19th day of December, 2014, a true and correct copy of the foregoing was mailed, e-mailed or hand-delivered to:

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Nathan M. Bloomer

**EXHIBIT 2**

**SUPPLEMENT TO NRS APPLICATION FOR ETC DESIGNATION**

JAN 29 2015

FILED / RECEIVED

FEB 02 2015

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

APPLICATION OF NORTHEAST RURAL )  
SERVICES, INC. FOR DESIGNATION AS )  
AN ELIGIBLE TELECOMMUNICATIONS )  
CARRIER PURSUANT TO THE )  
TELECOMMUNICATIONS ACT OF 1996 )

CAUSE NO. PUD 201400359

**AMENDMENT TO APPLICATION**

Northeast Rural Services, Inc. ("NRS"), by its attorneys, hereby submits this Amendment to its Application for designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended ("Act"),<sup>1</sup> Part 54 of the Federal Communications Commission ("FCC") Regulations,<sup>2</sup> Art. IX, Sec. 18 *et seq.* of the Oklahoma Constitution, and Sections 165:59-3-14(e) and 165:5-9-2(d) of the Oklahoma Corporation Commission ("OCC") Regulations.<sup>3</sup> NRS' original Application filed in the above-referenced cause is amended as follows:

- **Exhibit A is withdrawn from the Application, and an Amended Exhibit A listing the exchanges or study areas in which NRS is seeking designation is attached hereto.**
- **In Section II, Subsection A on page 4 of the original Application titled "NRS will offer services supported by federal universal service support mechanisms":**

The term "telecommunications carrier" in the first sentence of Subsection A is amended to "common carrier."

- **Section II, Subsection D on page 5 of the original Application titled "NRS will provide supported services in the exchanges of Southwestern Bell Telephone d/b/a AT&T Exchanges" is withdrawn in its entirety and replaced with the following:**

<sup>1</sup> 47 U.S.C. § 214(e)(2).

<sup>2</sup> 47 C.F.R. Part 54.

<sup>3</sup> Okla. Admin. Code §§ 165:59-3-14(e) & 165:5-9-2(d).

**EXHIBIT  
"2"**

D. NRS will provide supported services if the exchanges or study areas of Southwestern Bell Telephone Company d/b/a AT&T Oklahoma, Chouteau Telephone Company d/b/a FairPoint Communications, and CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink

The ability of a common carrier to operate as an ETC is limited to a “service area designated by the State commission.”<sup>4</sup> NRS seeks designation as an ETC in the exchanges or study areas of price cap carriers Southwestern Bell Telephone Company d/b/a AT&T Oklahoma, Chouteau Telephone Company d/b/a FairPoint Communications, and CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink as more particularly described on Amended Exhibit “A” attached hereto. NRS requests the OCC not designate NRS as a carrier of last resort, an obligation the FCC has stated is not required under its rural broadband experiment.<sup>5</sup>

D-1. Designating NRS as an ETC is in the Public Interest:

In the event any of Southwestern Bell Telephone Company d/b/a AT&T Oklahoma, Chouteau Telephone Company d/b/a FairPoint Communications, or CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink are rural telephone companies, as defined in 47 U.S.C. § 153(44), the designation of NRS as an Eligible Telecommunications Carrier is in the public interest.<sup>6</sup>

The Telecommunications Act of 1996, as amended (“Act”) aims “to secure lower prices and higher quality services for American telecommunications customers and encourage the rapid deployment of new telecommunications technologies.”<sup>7</sup> The Federal Communication Commission (“FCC”) created the Connect America Fund (“CAF”) to “advance the deployment of voice and broadband-capable networks in rural, high-cost areas, including extremely high-cost areas, while ensuring that rural Americans benefit from the historic technology transitions that

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<sup>4</sup> 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.207.

<sup>5</sup> Federal Communications Commission, *FAQs for Rural Broadband Experiments* at § III(C).

<sup>6</sup> 47 U.S.C. § 214(e)(2).

<sup>7</sup> *Telecommunications Act of 1996*, Pub. L., No. 104-104, 110 Stat. 56.

are transforming our nation's communications services.”<sup>8</sup> In its *Tech Transitions Order*, the FCC explained it must “ensure that all Americans benefit from the technology transitions, and that [the FCC] gain data on the impact of technology transitions in rural areas, including Tribal lands, where residential customers, small businesses and anchor institutions, including schools, libraries and health care providers, may not have access to advanced broadband services.”<sup>9</sup> Further, one of the CAF's stated purposes is to make available “broadband . . . services to unserved American homes, businesses, and community anchor institutions, while transitioning universal service to an efficient, technology-neutral system that uses tools, including competitive bidding, to ensure that scarce public resources support the best possible communications services for rural America.”<sup>10</sup> NRS' current request for designation as an ETC must be examined in light of the Act's goals of securing lower prices and higher quality services for rural Oklahomans.

NRS is seeking to provide an additional competitive alternative to the services currently existing in the areas subject to this Application. NRS' proposed offerings will promote competition and facilitate the provision of advanced communications services to Oklahoma residents. Factors supporting designation of NRS as an ETC include, but are not limited to: (1) increased competitive choice; (2) the unique advantages of NRS' offerings; (3) NRS' commitment to provide quality service by expanding and improving its network and facilities; (4) the supported services will be provided in a reasonable time; (5) unserved and underserved Americans will receive supported services; and (6) the positive impact on universal service.<sup>11</sup> These factors are merely amongst the reason granting this Application is in the public interest.

---

<sup>8</sup> *Report and Order and Further Notice of Proposed Rulemaking*, ¶ 1, FCC 14-98 (Released July 14, 2014).

<sup>9</sup> *Id.*, at ¶ 6 (quoting Federal Communications Commission, *Rural Broadband Experiments* (updated as of Apr. 25, 2014)).

<sup>10</sup> *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, ¶ 120 (Released November 18, 2011).

<sup>11</sup> See e.g. *Application of Pine Cellular Phones, Inc. for Certification as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause No. PUD 200500467, Order No. 528700.

1. Increased Competitive Choice.

NRS will provide an additional competitive choice allowing rural Americans to realize the Act's goals of lower prices coupled with higher quality service. NRS proposes to offer broadband reaching speeds up to 1 gigabit to residential and business customers. These unique speeds, along with NRS' potential implementation of voice-over-internet-protocol ("VoIP") to provide supported voice telephony services, encompass a competitive alternative to currently offered services in the applicable rural study areas.<sup>12</sup>

Grant of NRS' application will serve the public interest by increasing the number of ETCs in Oklahoma, thus allowing more Oklahoma residents to receive the supported services, thereby increasing the USF support flowing into Oklahoma. Another ETC in these areas will increase the number of individuals connected to the public switched telephone network and/or the Internet.

2. Uniqueness Advantages of NRS' Offerings.

NRS' VoIP and broadband services will be unique in the rural telephone company study areas subject to this application. Both the technology used and the speeds obtainable with this technology will differ from the current services provided in the rural telephone companies' study areas.

3. Quality Service through Network Expansion and Improvement.

NRS remains committed to providing expanded and improved network and facilities to facilitate the provision of quality service in the proposed areas. NRS has initiated construction of, and plans to continue construction of a fiber plant which will allow NRS to provide broadband along with other supported services, as required by the CAF, to customers in the rural telephone company study areas subject to this application.

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<sup>12</sup> See *Cox Oklahoma Telecom, LLC v. State ex rel. Okla. Corp. Com'n.*, 164 P.3d 150, 2007 OK 55, ¶¶ 40-47.

4. Supported Services Provided in a Reasonable Time.

As a condition of rural broadband experiment funding, provisionally selected bidders such as NRS must commit to providing USF supported services in a reasonable time. Specifically, the rural broadband experiment requires entities offer service to at least 85 percent of supported locations within three years, and 100 percent of supported locations within five years.<sup>13</sup> Offering the supported services to 85 percent of locations within three years, and 100 percent of locations within five years, or earlier, provides for a reasonable deployment timeframe.

5. Services Reaching Customers in Currently Underserved Areas.

Granting this application will facilitate the provision of services to households currently unserved or underserved. The FCC established the CAF “to bring broadband to unserved areas; support advanced mobile voice and broadband networks in rural, insular and high-cost areas; expand fixed broadband and facilitate reform of the intercarrier compensation system.”<sup>14</sup>

All exchanges or study areas subject to this application include census blocks eligible for funding through the rural broadband experiment, a subset of the CAF. As the FCC allowed bidding in these census blocks because they were underserved or unserved, the public interest favors granting this application.

6. Positive Impact on Universal Service.

Another ETC in Oklahoma will allow additional USF support to reach unserved or underserved Oklahoma residents, allowing for the construction of additional facilities and

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<sup>13</sup> *Report and Order and Further Notice of Proposed Rulemaking*, FCC 14-98, ¶ 74 (Released July 14, 2014).

<sup>14</sup> *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, ¶¶ 115, 116 (Released November 18, 2011).

ultimately connecting more customers to the telecommunications network.<sup>15</sup> In the price cap areas subject to this application, legacy universal service support has been redirected into the CAF, and thus any negative effect on customers receiving services through legacy universal support, if any, will be minimal and outweighed by the Americans who will benefit from the granting of this Application.

For reasons including but not limited to those stated above, designation of NRS as an ETC in the State of Oklahoma accords with the requirements of Section 214(e)(2) of the Act and is in the public interest.

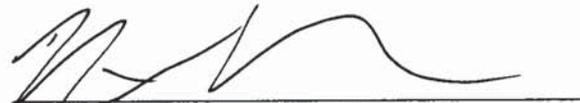
DATED this 29th day of January, 2015.

Respectfully submitted,

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Attorneys for Applicant, Northeast Rural  
Services, Inc.

By:



Michael T. Torrone, OBA #21848  
Nathan M. Bloomer, OBA #31944

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<sup>15</sup> See *Application of Pine Cellular Phones, Inc. for Certification as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause No. PUD 200500467, Order No. 528700, 2006 WL 7357816 at \*5 (August 22, 2006).

**AMENDED EXHIBIT "A"**

Southwestern Bell Telephone, LP d/b/a AT&T Oklahoma

Afton

Chelsea

Claremore

Commerce

Fairland

Grove

Ketchum

Miami

Nowata

Picher

Pryor

Quapaw

South Chetopa

Vinita

Chouteau Telephone Company d/b/a FairPoint Communications

Chouteau

CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink

Colcord

West Maysville

Watts

**CERTIFICATE OF MAILING**

On this 29th day of January, 2015, a true and correct copy of the foregoing was mailed, e-mailed or hand-delivered to:

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Nathan M. Bloomer

**EXHIBIT 3**

**DISMISSAL OF INTERESTED PARTIES WITHOUT PREJUDICE**

FEB 12 2015  
FILED 7 RECEIVED

6

FEB 17 2015

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA OF OKLAHOMA

APPLICATION OF NORTHEAST RURAL )  
SERVICES, INC. FOR DESIGNATION AS )  
AN ELIGIBLE TELECOMMUNICATIONS )  
CARRIER PURSUANT TO THE )  
TELECOMMUNICATIONS ACT OF 1996 )

CAUSE NO. PUD 201400359

**DISMISSAL OF INTERESTED PARTIES WITHOUT PREJUDICE**

COMES NOW, Northeast Rural Services, Inc. (NRS), by its undersigned counsel, and in accordance with the February 12, 2015 hearing before the Oklahoma Corporation Commission (OCC) in the above-captioned cause, states as follows:

1. NRS's Motion for Procedural Schedule (Motion) filed herein was heard on February 12, 2015.<sup>1</sup> Prior to presenting the Motion, NRS stipulated on the record that it is no longer seeking ETC designation for the rural telephone company study areas of Chouteau Telephone Company d/b/a FairPoint Communications (Chouteau) and CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink (CenturyTel) in this cause and moved to dismiss Chouteau and CenturyTel as interested parties pursuant to Okla. Admin. Code § 165:5-9-5(f) without prejudice to refile for relief in the subject rural telephone company areas or otherwise.<sup>2</sup>

2. Chouteau had no objection and, if dismissed, Chouteau agreed not to intervene in this cause.

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<sup>1</sup> Upon presentation of the Motion, the Administrative Law Judge (ALJ) intends to recommend to the Commissioners that the merits hearing in this cause regarding NRS's requested relief within the previously identified Southwestern Bell Telephone Company d/b/a AT&T Oklahoma exchanges be set on February 27, 2015, as requested in the proposed procedural schedule filed herein.

<sup>2</sup> The grounds for NRS's stipulation and dismissal request were more fully stated on the record at the above-referenced hearing and, for sake of brevity, are adopted herein by reference.



3. Hearing no objections to NRS's stipulation and dismissal motion, the ALJ directed NRS to file a formal dismissal and Chouteau to file a formal withdrawal from this proceeding.

4. In accordance with the ALJ's direction, NRS hereby formally dismisses without prejudice rural telephone companies, Chouteau Telephone Company d/b/a FairPoint Communications and CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink from this proceeding in conformity with this Dismissal and the above-referenced hearing.

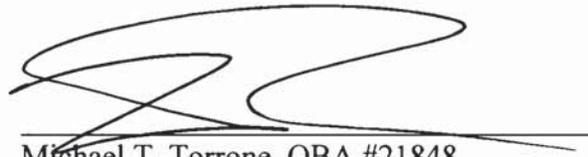
Dated this 12<sup>th</sup> day of February, 2015.

Respectfully submitted,

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Attorneys for Applicant, Northeast Rural Services,  
Inc.

By:



Michael T. Torrone, OBA #21848  
Nathan M. Bloomer, OBA #31944

**CERTIFICATE OF MAILING**

On this 12<sup>th</sup> day of February, 2015, a true and correct copy of the foregoing was mailed, e-mailed or hand-delivered to:

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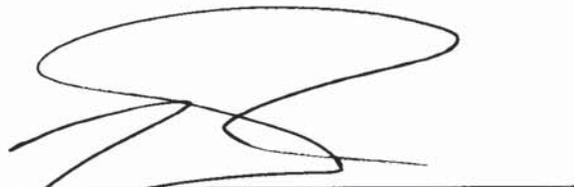
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Michael T. Torrone

**EXHIBIT 4**

**NRS APPLICATION FOR ETC DESIGNATION IN CHOUTEAU AREAS**

FEB 20 2015  
FILED / RECEIVED

FEB 25 2015

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

APPLICATION OF NORTHEAST RURAL )  
SERVICES, INC. FOR DESIGNATION AS )  
AN ELIGIBLE TELECOMMUNICATIONS )  
CARRIER PURSUANT TO THE )  
TELECOMMUNICATIONS ACT OF 1996 )

CAUSE NO. PUD 201 **500079**

**APPLICATION OF NORTHEAST RURAL SERVICES, INC.**  
**FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS**  
**CARRIER IN THE STUDY AREA OF CHOUTEAU TELEPHONE**  
**COMPANY D/B/A FAIRPOINT COMMUNICATIONS**

Northeast Rural Services, Inc. ("NRS"), by its attorneys, hereby submits this Application for designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(2) of the Telecommunications Act of 1996, as amended ("Act"),<sup>1</sup> Part 54 of the Federal Communications Commission ("FCC") Regulations,<sup>2</sup> Art. IX, Sec. 18 *et seq.* of the Oklahoma Constitution, and Section 165:59-3-14(e) of the Oklahoma Corporation Commission ("OCC") Regulations.<sup>3</sup> NRS requests that it be designated as eligible to receive all available support from the federal Universal Service Fund ("USF") support mechanisms, including the Connect America Fund ("CAF") (rural broadband experiment and Phase II support in price cap areas) along with support for low income customers throughout the geographic area specified in this Application. In support of this Application, NRS submits the following:

**I. APPLICANT**

On September 12, 2013, the OCC issued NRS a certificate of convenience and necessity to provide data-only telecommunications throughout the State of Oklahoma.<sup>4</sup> NRS is an Oklahoma corporation providing data-only telecommunications to its customers in Oklahoma.

<sup>1</sup> 47 U.S.C. § 214(e)(2).

<sup>2</sup> 47 C.F.R. Part 54.

<sup>3</sup> Okla. Admin. Code § 165:59-3-14(e).

<sup>4</sup> OCC Order Number 615809, Cause Number 201200015

**EXHIBIT**  
**"4"**

OKLA CORP COM  
RECEIPT 1505940028  
Date: 02/25/2015 Time: 11:18  
Case: 201500079 PUD Cashier: LRI  
Payor: NORTHEAST RURAL SERVICES, IN  
Check: 129224 \$100.00  
71 OIL&GAS/TRAN/PUD APP

NRS's designated representative is Sheila Allgood, P.O. Box 399, Vinita, OK 74301, (918) 256-9441. NRS's attorneys are Logan and Lowry, LLP (Attn: Michael T. Torrone), 101 South Wilson Street, P.O. Box 558, Vinita, OK 74301, (918) 256-7511. NRS has proceedings pending before the OCC in Cause No. PUD 201400359<sup>5</sup> and Cause No. PUD 201500014.<sup>6</sup>

## II. ALLEGATION OF FACTS

NRS submitted a bid for CAF Phase II rural broadband experiment support in price cap areas to deploy new, robust broadband to potential Oklahoma consumers.<sup>7</sup> The FCC awarded NRS \$1,029,274.00 to provide services in Craig, Delaware, Ottawa and Mayes counties in the State of Oklahoma. As stated in the *Tech Transition Order*,<sup>8</sup> the FCC requires NRS to be designated as an ETC within ninety (90) days of the award date,<sup>9</sup> subject to the FCC's ability to waive the same for good cause shown. Accordingly, NRS respectfully requests that the OCC expeditiously approve this Application for ETC designation so that NRS may utilize CAF Phase II support to provide broadband and USF supported services to rural Oklahoma.

In its *USF/ICC Transformation Order*,<sup>10</sup> the FCC made sweeping changes to federal universal service support mechanisms. One of the most significant changes was the creation of the CAF, which the FCC created to ultimately replace all of the FCC's current high cost support mechanisms. In addition, the FCC expanded the purpose of universal service to increase the availability of broadband service to unserved and remote areas. In areas served by price cap carriers, the FCC introduced CAF support for broadband in two phases. During the first phase,

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<sup>5</sup> Application for Eligible Telecommunications Carrier designation is certain Southwestern Bell Telephone Company d/b/a AT&T Oklahoma exchanges.

<sup>6</sup> Application for expansion of authorized services under data-only Certificate of Convenience and Necessity.

<sup>7</sup> See *Report and Order and Further Notice of Proposed Rulemaking*, FCC 14-98 at ¶ 1 (Adopted: July 11, 2014) ("Rural Broadband Experiment Order").

<sup>8</sup> *Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative*, FCC 14-5 at ¶ 118 (Adopted: January 30, 2014) ("Tech Transition Order").

<sup>9</sup> The applicable date for ETC designation is March 5, 2015. See *Rural Broadband Experiment Order* at ¶ 22.

<sup>10</sup> *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 (Adopted October 27, 2011).

legacy high cost support to price cap carriers was frozen and carriers electing to receive additional funding were required to extend broadband service to additional unserved locations for every \$775 in incremental support. During Phase II, support is subject to the price cap carrier's commitment to deploy broadband on the state level, which allows the price cap carrier to receive funding based on an FCC cost model. Where the price cap carrier declines the state-level commitment, the FCC decided to implement competitive bidding in order to distribute support in a way that maximizes the extent of robust, scalable broadband service. NRS's current ETC application involves funds to be distributed under the CAF.

Universal service is a primary goal of the OCC's telecommunications policy, just as universal service is a primary aim of the FCC.<sup>11</sup> Section 214(e)(2) of the Act provides the OCC federally delegated authority to designate NRS as an ETC. Federal law requires an entity designated as an ETC to, throughout the service area which the entity is so designated, "offer the services supported by Federal universal support mechanisms under [Section 254(c) of the Act] either using its own facilities or a combination of its own facilities and resale of another carrier's services" in addition to advertising "the availability of such services and the charges therefore using media of general distribution."<sup>12</sup> Further, if the common carrier's proposed service territory is currently serviced by a rural telephone company, the OCC must find the ETC designation is in the public interest.<sup>13</sup>

The FCC has adopted minimal rules for state commission ETC designations, and these rules implement the provisions of Section 214(e) of the Act.<sup>14</sup> In Oklahoma, the OCC echoed these requirements when adopting a rule requiring telecommunications service providers who

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<sup>11</sup> Okla. Admin. Code § 165:55-17-19; *See* 47 U.S.C. § 254(b).

<sup>12</sup> 47 U.S.C. § 214(e)(1).

<sup>13</sup> 47 U.S.C. § 214(e)(2).

<sup>14</sup> *See* 47 C.F.R. § 54.201.

seek federal funding to meet the requirements of 47 U.S.C. § 214(e).<sup>15</sup> The FCC determined that a state commission may, in the area served by a rural telephone company, “[u]pon request and consistent with the public interest, convenience, and necessity[,] . . . designate more than one common carrier as an eligible carrier” after finding the designation is in the public interest.<sup>16</sup>

A. NRS will offer services supported by federal universal service support mechanisms

In addition to any information services NRS may provide, NRS will provide the supported telecommunications services<sup>17</sup> as a telecommunications carrier. 47 C.F.R. § 54.5. Thus, to the extent NRS is engaged in offering the supported services on a non-discriminatory basis “for a fee directly to the public, or to such classes of users to be effectively available directly to the public . . .”, NRS will be a common carrier under the Act, and eligible for designation as an ETC pursuant to 47 U.S.C. § 214(e). *Id.*

In order to receive CAF support, an ETC must offer voice telephony services, which term encompasses: “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 emergency services provided by local government or other safety organizations, such as 911 and enhanced 911, [to the extent implemented in the area]; and toll limitation services to qualifying low-income customers . . . .”<sup>18</sup> NRS will satisfy these requirements with its proposed voice and broadband offerings.

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<sup>15</sup> Okla. Admin. Code § 165:59-3-14(e).

<sup>16</sup> 47 C.F.R. § 54.201(c).

<sup>17</sup> 47 C.F.R. § 54.101.

<sup>18</sup> 47 C.F.R. § 54.201.

B. NRS will offer the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services

Federal law requires an ETC to provide supported services using its own facilities and a combination of another carrier's facilities.<sup>19</sup> Though, "a telecommunications carrier is not eligible for support if the carrier offers the supported services exclusively through the resale of another carrier's services."<sup>20</sup> NRS intends to construct its own facilities to provide supported services with its rural broadband experiment grant.

C. NRS will advertise the availability and charges for NRS's services using media of general distribution

An ETC must "advertise the availability of [the supported services it will offer] and the charges therefor using media of general distribution"<sup>21</sup> NRS intends to advertise its proposed services through multiple mediums, which may include, but not be limited to, the Internet, newspapers, billboards, television and radio commercials, direct mailings, public displays, and bill inserts, amongst other available mediums.

D. NRS will provide supported services in the study area of Chouteau Telephone Company d/b/a FairPoint Communications

The ability of a common carrier to operate as an ETC is limited to a "service area designated by the State commission."<sup>22</sup> NRS seeks designation as an ETC in study area of Chouteau Telephone Company d/b/a FairPoint Communications ("Chouteau"). NRS requests the OCC not designate NRS as a carrier of last resort, unless the same is a prerequisite to granting the relief requested herein, as the FCC does not require designation as a carrier of last resort is not required under its rural broadband experiment.<sup>23</sup>

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<sup>19</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>20</sup> 47 C.F.R. § 54.201(i).

<sup>21</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>22</sup> 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.207.

<sup>23</sup> Federal Communications Commission, *FAQs for Rural Broadband Experiments* at § III(C).

E. Designating NRS as an ETC is in the Public Interest:

The Telecommunications Act of 1996, as amended aims “to secure lower prices and higher quality services for American telecommunications customers and encourage the rapid deployment of new telecommunications technologies.”<sup>24</sup> The Federal Communication Commission created the Connect America Fund to “advance the deployment of voice and broadband-capable networks in rural, high-cost areas, including extremely high-cost areas, while ensuring that rural Americans benefit from the historic technology transitions that are transforming our nation’s communications services.”<sup>25</sup> In its *Tech Transitions Order*, the FCC explained it must “ensure that all Americans benefit from the technology transitions, and that [the FCC] gain data on the impact of technology transitions in rural areas, including Tribal lands, where residential customers, small businesses and anchor institutions, including schools, libraries and health care providers, may not have access to advanced broadband services.”<sup>26</sup> Further, one of the CAF’s stated purposes is to make available “broadband . . . services to unserved American homes, businesses, and community anchor institutions, while transitioning universal service to an efficient, technology-neutral system that uses tools, including competitive bidding, to ensure that scarce public resources support the best possible communications services for rural America.”<sup>27</sup> NRS’ current request for designation as an ETC must be examined in light of the Act’s goals of securing lower prices and higher quality services for rural Oklahomans.

NRS is seeking to provide an additional competitive alternative to the services currently existing in the areas subject to this Application. NRS’ proposed offerings will promote

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<sup>24</sup> *Telecommunications Act of 1996*, Pub. L., No. 104-104, 110 Stat. 56.

<sup>25</sup> *Report and Order and Further Notice of Proposed Rulemaking*, ¶ 1, FCC 14-98 (Released July 14, 2014).

<sup>26</sup> *Id.*, at ¶ 6 (quoting Federal Communications Commission, *Rural Broadband Experiments* (updated as of Apr. 25, 2014)).

<sup>27</sup> *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, ¶ 120 (Released November 18, 2011).

competition and facilitate the provision of advanced communications services to Oklahoma residents. Factors supporting designation of NRS as an ETC include, but are not limited to: (1) increased competitive choice; (2) the unique advantages of NRS' offerings; (3) NRS' commitment to provide quality service by expanding and improving its network and facilities; (4) the supported services will be provided in a reasonable time; (5) unserved and underserved Americans will receive supported services; and (6) the positive impact on universal service.<sup>28</sup> These factors are merely amongst the reason granting this Application is in the public interest.

*1. Increased Competitive Choice.*

NRS will provide an additional competitive choice allowing rural Americans to realize the Act's goals of lower prices coupled with higher quality service. NRS proposes to offer broadband reaching speeds up to 1 gigabit to residential and business customers. These unique speeds, along with NRS' implementation of voice-over-internet-protocol ("VoIP") to provide supported voice telephony services, encompass a competitive alternative to currently offered services in the applicable rural study area.<sup>29</sup>

Grant of NRS' application will serve the public interest by increasing the number of ETCs in Oklahoma, thus allowing more Oklahoma residents to receive the supported services, thereby increasing the USF support flowing into Oklahoma. Another ETC in these areas will increase the number of individuals connected to the public switched telephone network and/or the Internet.

*2. Uniqueness Advantages of NRS' Offerings.*

NRS' VoIP and broadband services will be unique in the rural telephone company study area subject to this application. Both the technology used and the speeds obtainable with this

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<sup>28</sup> See e.g. *Application of Pine Cellular Phones, Inc. for Certification as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause No. PUD 200500467, Order No. 528700.

<sup>29</sup> See *Cox Oklahoma Telecom, LLC v. State ex rel. Okla. Corp. Com'n.*, 164 P.3d 150, 2007 OK 55, ¶¶ 40-47.

technology will differ from the current services provided in the rural telephone company's study area.

3. *Quality Service through Network Expansion and Improvement.*

NRS remains committed to providing expanded and improved network and facilities to facilitate the provision of quality service in the proposed areas. NRS has initiated construction of, and plans to continue construction of a fiber plant which will allow NRS to provide broadband along with other supported services, as required by the CAF, to customers in the rural telephone company study area subject to this application.

4. *Supported Services Provided in a Reasonable Time.*

As a condition of rural broadband experiment funding, provisionally selected bidders such as NRS must commit to providing USF supported services in a reasonable time. Specifically, the rural broadband experiment requires entities offer service to at least 85 percent of supported locations within three years, and 100 percent of supported locations within five years.<sup>30</sup> Offering the supported services to 85 percent of locations within three years, and 100 percent of locations within five years, or earlier, provides for a reasonable deployment timeframe.

5. *Services Reaching Customers in Currently Underserved Areas.*

Granting this application will facilitate the provision of services to households currently unserved or underserved. The FCC established the CAF "to bring broadband to unserved areas; support advanced mobile voice and broadband networks in rural, insular and high-cost areas; expand fixed broadband and facilitate reform of the intercarrier compensation system."<sup>31</sup>

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<sup>30</sup> *Report and Order and Further Notice of Proposed Rulemaking*, FCC 14-98, ¶ 74 (Released July 14, 2014).

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Both study area subject to this application include census blocks eligible for funding thorough the rural broadband experiment, a subset of the CAF. As the FCC allowed bidding in these census blocks because they were underserved or unserved, the public interest favors granting this application.

6. *Positive Impact on Universal Service.*

Another ETC in Oklahoma will allow additional USF support to reach unserved or underserved Oklahoma residents, allowing for the construction of additional facilities and ultimately connecting more customers to the telecommunications network.<sup>32</sup> In the price cap areas subject to this application, legacy universal service support has been redirected into the CAF, and thus any negative effect on customers receiving services though legacy universal support, if any, will be minimal and outweighed by the individuals who will benefit from the granting of this Application.

F. NRS will comply with all USF requirements not specifically enumerated herein

In the Technology Transitions Order<sup>33</sup> and the Rural Broadband Experiments Order,<sup>34</sup> as reflected in applicable regulations,<sup>35</sup> the FCC established, eliminated and modified various rules and procedures applicable to ETCs in order to craft rules for the CAF Phase II. While not specifically applicable to the statutory and regulatory prerequisites to state-based ETC designation, NRS is aware of and will comply with applicable USF requirements.<sup>36</sup>

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<sup>32</sup> See *Application of Pine Cellular Phones, Inc. for Certification as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause No. PUD 200500467, Order No. 528700, 2006 WL 7357816 at \*5 (August 22, 2006).

<sup>33</sup> See *Technology Transition Order*.

<sup>34</sup> See *Rural Broadband Experiments Order*.

<sup>35</sup> 47 C.F.R. Part 54.

<sup>36</sup> See e.g. *Rural Broadband Experiment Order* at ¶¶ 73-75 (Build Out Requirements), 82 (Certification), 85 (Record Retention).

### **III. LEGAL AUTHORITY**

The OCC has the legal authority to grant the relief requested herein pursuant to 47 U.S.C. § 214(e); 47 C.F.R. Part 54; Art. IX, Sec. 18, *et seq.*, of the Oklahoma Constitution, and Okla. Admin. Code § 165:59-3-14(e).

### **IV. RELIEF REQUESTED**

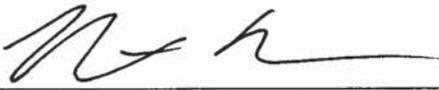
For the reasons set forth above, and pursuant to Section 214(e) of the federal Telecommunications Act of 1934, as amended, Part 54 of the Federal Communications Commission Regulations, Art. IX, Sec. 18 *et seq.* of the Oklahoma Constitution, and Section 165:59-3-14(e) of the Oklahoma Corporation Commission Regulations, NRS requests that the OCC enter an Order designating NRS as an ETC, as set forth herein, eligible to receive all available support from the federal USF support mechanisms, including the CAF (rural broadband experiment and Phase II support in price cap areas) along with support for low income customers throughout the Chouteau study area. NRS further respectfully requests that the OCC enter its Order at the earliest possible date and grant NRS such other relief as the OCC may deem proper.

DATED this 20th day of February, 2015.

Respectfully submitted,

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Attorneys for Applicant, Northeast Rural  
Services, Inc.

By:   
\_\_\_\_\_  
Michael T. Torrone, OBA #21848  
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**CERTIFICATE OF MAILING**

On this 20th day of February, 2015, a true and correct copy of the foregoing was mailed to:

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Nathan M. Bloomer

**EXHIBIT 5**

**NRS APPLICATION FOR ETC DESIGNATION IN CENTURYTEL  
AREAS**

**FEB 20 2015**

FILED / RECEIVED

**FEB 25 2015**

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

APPLICATION OF NORTHEAST RURAL )  
SERVICES, INC. FOR DESIGNATION AS )  
AN ELIGIBLE TELECOMMUNICATIONS )  
CARRIER PURSUANT TO THE )  
TELECOMMUNICATIONS ACT OF 1996 )

CAUSE NO. PUD 201 **500081**

**APPLICATION OF NORTHEAST RURAL SERVICES, INC. FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STUDY AREA OF CENTURYTEL OF NORTHWEST ARKANSAS, LLC D/B/A CENTURYLINK**

Northeast Rural Services, Inc. ("NRS"), by its attorneys, hereby submits this Application for designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(2) of the Telecommunications Act of 1996, as amended ("Act"),<sup>1</sup> Part 54 of the Federal Communications Commission ("FCC") Regulations,<sup>2</sup> Art. IX, Sec. 18 *et seq.* of the Oklahoma Constitution, and Section 165:59-3-14(e) of the Oklahoma Corporation Commission ("OCC") Regulations.<sup>3</sup> NRS requests that it be designated as eligible to receive all available support from the federal Universal Service Fund ("USF") support mechanisms, including the Connect America Fund ("CAF") (rural broadband experiment and Phase II support in price cap areas) along with support for low income customers throughout the geographic area specified in this Application. In support of this Application, NRS submits the following:

**I. APPLICANT**

On September 12, 2013, the OCC issued NRS a certificate of convenience and necessity to provide data-only telecommunications throughout the State of Oklahoma.<sup>4</sup> NRS is an Oklahoma corporation providing data-only telecommunications to its customers in Oklahoma. NRS's designated representative is Sheila Allgood, P.O. Box 399, Vinita, OK 74301, (918) 256-

<sup>1</sup> 47 U.S.C. § 214(e)(2).

<sup>2</sup> 47 C.F.R. Part 54.

<sup>3</sup> Okla. Admin. Code § 165:59-3-14(e).

<sup>4</sup> OCC Order Number 615809, Cause Number 201200015

**EXHIBIT  
"5"**

OKLA CORP COMM  
RECEIPT 1505740027  
Date: 02/25/2015 Time: 11:19  
Case: 201500081 PUD Cashier: LBI  
Payor: NORTHEAST RURAL SERVICES  
Check: 129224 \$100.00  
71 OIL&GAS/TRAN/PUD AFP

9441. NRS's attorneys are Logan and Lowry, LLP (Attn: Michael T. Torrone), 101 South Wilson Street, P.O. Box 558, Vinita, OK 74301, (918) 256-7511. NRS has proceedings pending before the OCC in Cause No. PUD 201400359<sup>5</sup> and Cause No. PUD 201500014.<sup>6</sup>

## II. ALLEGATION OF FACTS

NRS submitted a bid for CAF Phase II rural broadband experiment support in price cap areas to deploy new, robust broadband to potential Oklahoma consumers.<sup>7</sup> The FCC awarded NRS \$1,029,274.00 to provide services in Craig, Delaware, Ottawa and Mayes counties in the State of Oklahoma. As stated in the *Tech Transition Order*,<sup>8</sup> the FCC requires NRS to be designated as an ETC within ninety (90) days of the award date,<sup>9</sup> subject to the FCC's ability to waive the same for good cause shown. Accordingly, NRS respectfully requests that the OCC expeditiously approve this Application for ETC designation so that NRS may utilize CAF Phase II support to provide broadband and USF supported services to rural Oklahoma.

In its *USF/ICC Transformation Order*,<sup>10</sup> the FCC made sweeping changes to federal universal service support mechanisms. One of the most significant changes was the creation of the CAF, which the FCC created to ultimately replace all of the FCC's current high cost support mechanisms. In addition, the FCC expanded the purpose of universal service to increase the availability of broadband service to unserved and remote areas. In areas served by price cap carriers, the FCC introduced CAF support for broadband in two phases. During the first phase, legacy high cost support to price cap carriers was frozen and carriers electing to receive

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<sup>5</sup> Application for Eligible Telecommunications Carrier designation is certain Southwestern Bell Telephone Company d/b/a AT&T Oklahoma exchanges.

<sup>6</sup> Application for expansion of authorized services under data-only Certificate of Convenience and Necessity.

<sup>7</sup> See *Report and Order and Further Notice of Proposed Rulemaking*, FCC 14-98 at ¶ 1 (Adopted: July 11, 2014) ("Rural Broadband Experiment Order").

<sup>8</sup> *Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative*, FCC 14-5 at ¶ 118 (Adopted: January 30, 2014) ("Tech Transition Order").

<sup>9</sup> The applicable date for ETC designation is March 5, 2015. See *Rural Broadband Experiment Order* at ¶ 22.

<sup>10</sup> *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 (Adopted October 27, 2011).

additional funding were required to extend broadband service to additional unserved locations for every \$775 in incremental support. During Phase II, support is subject to the price cap carrier's commitment to deploy broadband on the state level, which allows the price cap carrier to receive funding based on an FCC cost model. Where the price cap carrier declines the state-level commitment, the FCC decided to implement competitive bidding in order to distribute support in a way that maximizes the extent of robust, scalable broadband service. NRS's current ETC application involves funds to be distributed under the CAF.

Universal service is a primary goal of the OCC's telecommunications policy, just as universal service is a primary aim of the FCC.<sup>11</sup> Section 214(e)(2) of the Act provides the OCC federally delegated authority to designate NRS as an ETC. Federal law requires an entity designated as an ETC to, throughout the service area which the entity is so designated, "offer the services supported by Federal universal support mechanisms under [Section 254(c) of the Act] either using its own facilities or a combination of its own facilities and resale of another carrier's services" in addition to advertising "the availability of such services and the charges therefore using media of general distribution."<sup>12</sup> Further, if the common carrier's proposed service territory is currently serviced by a rural telephone company, the OCC must find the ETC designation is in the public interest.<sup>13</sup>

The FCC has adopted minimal rules for state commission ETC designations, and these rules implement the provisions of Section 214(e) of the Act.<sup>14</sup> In Oklahoma, the OCC echoed these requirements when adopting a rule requiring telecommunications service providers who

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<sup>11</sup> Okla. Admin. Code § 165:55-17-19; *See* 47 U.S.C. § 254(b).

<sup>12</sup> 47 U.S.C. § 214(e)(1).

<sup>13</sup> 47 U.S.C. § 214(e)(2).

<sup>14</sup> *See* 47 C.F.R. § 54.201.

seek federal funding to meet the requirements of 47 U.S.C. § 214(e).<sup>15</sup> The FCC determined that a state commission may, in the area served by a rural telephone company, “[u]pon request and consistent with the public interest, convenience, and necessity[,] . . . designate more than one common carrier as an eligible carrier” after finding the designation is in the public interest.<sup>16</sup>

A. NRS will offer services supported by federal universal service support mechanisms

In addition to any information services NRS may provide, NRS will provide the supported telecommunications services<sup>17</sup> as a telecommunications carrier. 47 C.F.R. § 54.5. Thus, to the extent NRS is engaged in offering the supported services on a non-discriminatory basis “for a fee directly to the public, or to such classes of users to be effectively available directly to the public . . .”, NRS will be a common carrier under the Act, and eligible for designation as an ETC pursuant to 47 U.S.C. § 214(e). *Id.*

In order to receive CAF support, an ETC must offer voice telephony services, which term encompasses: “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 emergency services provided by local government or other safety organizations, such as 911 and enhanced 911, [to the extent implemented in the area]; and toll limitation services to qualifying low-income customers . . . .”<sup>18</sup> NRS will satisfy these requirements with its proposed voice and broadband offerings.

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<sup>15</sup> Okla. Admin. Code § 165:59-3-14(e).

<sup>16</sup> 47 C.F.R. § 54.201(c).

<sup>17</sup> 47 C.F.R. § 54.101.

<sup>18</sup> 47 C.F.R. § 54.201.

B. NRS will offer the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services

Federal law requires an ETC to provide supported services using its own facilities and a combination of another carrier's facilities.<sup>19</sup> Though, "a telecommunications carrier is not eligible for support if the carrier offers the supported services exclusively through the resale of another carrier's services."<sup>20</sup> NRS intends to construct its own facilities to provide supported services with its rural broadband experiment grant.

C. NRS will advertise the availability and charges for NRS's services using media of general distribution

An ETC must "advertise the availability of [the supported services it will offer] and the charges therefor using media of general distribution"<sup>21</sup> NRS intends to advertise its proposed services through multiple mediums, which may include, but not be limited to, the Internet, newspapers, billboards, television and radio commercials, direct mailings, public displays, and bill inserts, amongst other available mediums.

D. NRS will provide supported services in the study area of CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink

The ability of a common carrier to operate as an ETC is limited to a "service area designated by the State commission."<sup>22</sup> NRS seeks designation as an ETC in study area of CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink ("CenturyTel"). NRS requests the OCC not designate NRS as a carrier of last resort, unless the same is a prerequisite to granting the relief requested herein, as the FCC does not require designation as a carrier of last resort is not required under its rural broadband experiment.<sup>23</sup>

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<sup>19</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>20</sup> 47 C.F.R. § 54.201(i).

<sup>21</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>22</sup> 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.207.

<sup>23</sup> Federal Communications Commission, *FAQs for Rural Broadband Experiments* at § III(C).

E. Designating NRS as an ETC is in the Public Interest:

The Telecommunications Act of 1996, as amended aims “to secure lower prices and higher quality services for American telecommunications customers and encourage the rapid deployment of new telecommunications technologies.”<sup>24</sup> The Federal Communication Commission created the Connect America Fund to “advance the deployment of voice and broadband-capable networks in rural, high-cost areas, including extremely high-cost areas, while ensuring that rural Americans benefit from the historic technology transitions that are transforming our nation’s communications services.”<sup>25</sup> In its *Tech Transitions Order*, the FCC explained it must “ensure that all Americans benefit from the technology transitions, and that [the FCC] gain data on the impact of technology transitions in rural areas, including Tribal lands, where residential customers, small businesses and anchor institutions, including schools, libraries and health care providers, may not have access to advanced broadband services.”<sup>26</sup> Further, one of the CAF’s stated purposes is to make available “broadband . . . services to unserved American homes, businesses, and community anchor institutions, while transitioning universal service to an efficient, technology-neutral system that uses tools, including competitive bidding, to ensure that scarce public resources support the best possible communications services for rural America.”<sup>27</sup> NRS’ current request for designation as an ETC must be examined in light of the Act’s goals of securing lower prices and higher quality services for rural Oklahomans.

NRS is seeking to provide an additional competitive alternative to the services currently existing in the areas subject to this Application. NRS’ proposed offerings will promote

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<sup>24</sup> *Telecommunications Act of 1996*, Pub. L., No. 104-104, 110 Stat. 56.

<sup>25</sup> *Report and Order and Further Notice of Proposed Rulemaking*, ¶ 1, FCC 14-98 (Released July 14, 2014).

<sup>26</sup> *Id.*, at ¶ 6 (quoting Federal Communications Commission, *Rural Broadband Experiments* (updated as of Apr. 25, 2014)).

<sup>27</sup> *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, ¶ 120 (Released November 18, 2011).

competition and facilitate the provision of advanced communications services to Oklahoma residents. Factors supporting designation of NRS as an ETC include, but are not limited to: (1) increased competitive choice; (2) the unique advantages of NRS' offerings; (3) NRS' commitment to provide quality service by expanding and improving its network and facilities; (4) the supported services will be provided in a reasonable time; (5) unserved and underserved Americans will receive supported services; and (6) the positive impact on universal service.<sup>28</sup> These factors are merely amongst the reason granting this Application is in the public interest.

1. *Increased Competitive Choice.*

NRS will provide an additional competitive choice allowing rural Americans to realize the Act's goals of lower prices coupled with higher quality service. NRS proposes to offer broadband reaching speeds up to 1 gigabit to residential and business customers. These unique speeds, along with NRS' implementation of voice-over-internet-protocol ("VoIP") to provide supported voice telephony services, encompass a competitive alternative to currently offered services in the applicable rural study area.<sup>29</sup>

Grant of NRS' application will serve the public interest by increasing the number of ETCs in Oklahoma, thus allowing more Oklahoma residents to receive the supported services, thereby increasing the USF support flowing into Oklahoma. Another ETC in these areas will increase the number of individuals connected to the public switched telephone network and/or the Internet.

2. *Uniqueness Advantages of NRS' Offerings.*

NRS' VoIP and broadband services will be unique in the rural telephone company study area subject to this application. Both the technology used and the speeds obtainable with this

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<sup>28</sup> See e.g. *Application of Pine Cellular Phones, Inc. for Certification as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause No. PUD 200500467, Order No. 528700.

<sup>29</sup> See *Cox Oklahoma Telecom, LLC v. State ex rel. Okla. Corp. Com'n.*, 164 P.3d 150, 2007 OK 55, ¶¶ 40-47.

technology will differ from the current services provided in the rural telephone company's study area.

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NRS remains committed to providing expanded and improved network and facilities to facilitate the provision of quality service in the proposed areas. NRS has initiated construction of, and plans to continue construction of a fiber plant which will allow NRS to provide broadband along with other supported services, as required by the CAF, to customers in the rural telephone company study areas subject to this application.

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<sup>34</sup> See *Rural Broadband Experiments Order*.

<sup>35</sup> 47 C.F.R. Part 54.

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### **III. LEGAL AUTHORITY**

The OCC has the legal authority to grant the relief requested herein pursuant to 47 U.S.C. § 214(e); 47 C.F.R. Part 54; Art. IX, Sec. 18, *et seq.*, of the Oklahoma Constitution, and Okla. Admin. Code § 165:59-3-14(e).

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For the reasons set forth above, and pursuant to Section 214(e) of the federal Telecommunications Act of 1934, as amended, Part 54 of the Federal Communications Commission Regulations, Art. IX, Sec. 18 *et seq.* of the Oklahoma Constitution, and Section 165:59-3-14(e) of the Oklahoma Corporation Commission Regulations, NRS requests that the OCC enter an Order designating NRS as an ETC, as set forth herein, eligible to receive all available support from the federal USF support mechanisms, including the CAF (rural broadband experiment and Phase II support in price cap areas) along with support for low income customers throughout the CenturyTel study area. NRS further respectfully requests that the OCC enter its Order at the earliest possible date and grant NRS such other relief as the OCC may deem proper.

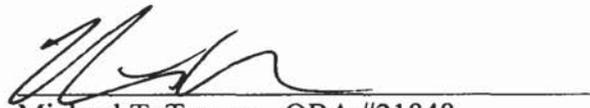
DATED this 20th day of February, 2015.

Respectfully submitted,

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By:



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Nathan M. Bloomer, OBA #31944

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