

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

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

Chouteau Telephone Company d/b/a FairPoint Communications Inc. (“Chouteau”) hereby opposes the Petition for Waiver and Request for Extension of Time to File Proof of ETC Designation (the “NRS Petition”) of Northeast Rural Services, Inc. (“NRS”), filed May 4 and supplemented on June 17, 2015 in the above-captioned dockets.

**Summary**

Chouteau opposes the NRS Petition because it fails to state good cause for the grant of a waiver. Chouteau supports the Response and Comments of the Public Utility Division (the “PUD”) of the Oklahoma Corporation Commission (the “OCC”) to the NRS Petition (the “PUD Response”).<sup>1</sup> Chouteau likewise seeks to correct misrepresentations made in the NRS Petition regarding proceedings at the OCC in which NRS sought designation as an Eligible Telecommunications Carrier (“ETC”) under Section 214(e)(2) of the Communications Act, as amended, 47 U.S.C. §214(e)(2). Chouteau recommends that the FCC dismiss or deny the

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<sup>1</sup> *Connect America Fund, Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-259, Response and Comments of the Public Utility Division of the Oklahoma Corporation Commission (filed June 26, 2015).

requested waiver. NRS may pursue its ETC designation before the OCC, following the rules that apply to all telecommunications carriers seeking such designation.

### **Discussion**

Chouteau is a rural telephone company as defined in the Communications Act, 47 U.S.C. §153(44), serving one of the study areas covered by NRS's ETC designation application before the OCC.

Chouteau adopts by reference, and confirms, the description of events and related timelines of actions set forth in the PUD's "Processing of Initial ETC Application" and "Processing of Subsequent ETC Applications" sections of its Response and Comments. Chouteau offers additional context and facts regarding the OCC proceedings at issue, and rebuts the following statements contained in the NRS Petition:

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.

NRS Petition, p. 4. For the reasons stated below, good cause does not exist to grant the requested waiver to NRS.

As stated above, Chouteau adopts by reference the PUD's recitation of events and relevant timelines related to those events. In particular, the PUD provides a detailed description of NRS's failure to diligently prosecute its own case.<sup>2</sup> Ultimately, NRS's own counsel on May

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<sup>2</sup> See PUD Response, p. 4-6.

7, 2015 requested that the PUD halt the processing of NRS's ETC application, PUD 201500079 and PUD 201500081.<sup>3</sup>

During the Hearing on PUD's Motion to Suspend Cause, held June 4, 2015, before an administrative law judge at the OCC, counsel for Chouteau, Kim Argenbright, described her previous conversations with NRS counsel. Ms. Argenbright confirmed that, in addition to contacting PUD Staff, NRS counsel contacted Ms. Argenbright for the purpose of discussing NRS's desire to halt proceedings at the OCC. Counsel for NRS requested that activities related to processing these cases at the OCC be stopped until NRS was able to secure required letters of credit and until there was an indication that the FCC would grant NRS's request for an extension of time to submit those letters of credit. Thus, it was NRS itself that was responsible for its failure to complete the ETC designation process at the OCC.

NRS's failure to process its case at the OCC is not the result of actions by the PUD or Chouteau or any other party but, rather, the result of delay and lack of follow-through on the part of NRS. NRS's failure to take timely steps to process its case, combined with its request that the case progress be halted while it obtained letters of credit and sought an FCC extension, belie its claim that it "diligently pursued its ETC designation" and that "through no fault of NRS ... it is unable to provide the required confirmation of ETC designation." NRS did not, as it asserts, work "tirelessly" to process its case at the OCC – NRS proceeded in an inefficient and ineffective manner and certainly presents no substantive evidence in its Petition to support its claim that it met "significant resistance from the PUD and Chouteau Telephone Company."

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<sup>3</sup> *Id.*

While Chouteau has no objection in principle to the grant of ETC status to competitors in accordance with the Communications Act and state regulations, good cause does not exist to grant a waiver as requested by NRS in this case. In the *Rural Broadband Experiments Order*, the Commission indicated that it might grant waivers or extensions of the 90-day requirement to confirm ETC status if the applicant demonstrates good faith in pursuing its ETC designation.<sup>4</sup> It would be consistent with FCC precedent if the Commission considered granting a waiver where an applicant made a good faith attempt to expeditiously obtain ETC status but failed to timely complete the process *through no fault of its own*. That is not the case here, however. As is abundantly clear from the PUD Response and the history of NRS's maneuverings, NRS lacks credibility. Rather than completing the required steps for ETC designation through the OCC's straightforward process, NRS has missed deadlines and failed to respond to PUD staff on repeated occasions. If an opportunity for ETC designation has been missed, it is through no fault other than that of NRS. Waiver is not appropriate in these circumstances.

### **Conclusion**

Chouteau supports the recitation of events and relevant timelines set forth by PUD in its Response. The record, both at the OCC and the FCC, is clear that any delay in the processing of NRS's applications for ETC designation is the sole fault of NRS and not the result of obstruction or purposeful delay by the PUD or Chouteau. NRS has failed to state good cause for a waiver.

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<sup>4</sup> *Connect America Fund et al.*, WC Docket Nos. 10-90, 14-58, Report & Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8778 (2014) (for example, waiver might be appropriate if an application had been timely filed but the state's docket had no hearing scheduled within the 90-day allotted timeframe).

Respectfully submitted,



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July 14, 2015

Certificate of Service

I, Karen Brinkmann, today served copies of the foregoing Opposition of Chouteau Telephone Company by U.S. Postal Service, first-class mail, postage prepaid, on the individuals listed below.

Date: July 14, 2015

/s/ Karen Brinkmann  
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