



Your business
is our business.

7852 Walker Drive, Suite 200
Greenbelt, Maryland 20770
phone: 301-459-7590, fax: 301-577-5575
internet: www.jsitel.com, e-mail: jsi@jsitel.com

December 17, 2015

VIA ECFS

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

Attention: Wireline Competition Bureau

**Re: Third Supplement to New Lisbon Broadband and Communications, LLC
Petition for Waiver of ETC Designation Deadline
Rural Broadband Experiments
WC Docket No. 10-90, WC Docket No. 14-259**

Dear Ms. Dortch:

On behalf of New Lisbon Broadband and Communications, LLC (“NLBC or “Company”), JSI hereby provides this Third Supplement in support of the above-referenced Petition for Waiver.¹ NLBC respectfully submits the attached timeline summary to inform the Federal Communications Commission of the extensive process which the Company undertook in order to secure Eligible Telecommunications Carrier (“ETC”) designation from the Indiana Utility Regulatory Commission. As demonstrated in the attached summary, the Company diligently sought to meet the 90-day deadline to obtain ETC designation per the requirements of the Rural Broadband Experiments.

Please direct inquiries regarding this Third Supplement to the undersigned consultant for the Company.

Sincerely,

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

Attachment

cc: Nissa Laughner, Telecommunications Access Policy Division

¹ See Petition of New Lisbon Broadband and Communications, LLC for Waiver of ETC Designation Deadline for Rural Broadband Experiments, WC Docket No. 10-90, WC Docket No. 14-259, filed March 4, 2015, Supplement filed March 31, 2015 and Second Supplement filed April 2, 2015.

New Lisbon – Timeline of Rural Broadband Experiment Deadlines and Milestones

- **November 5, 2014** - New Lisbon Telephone Company submitted an application for a rural broadband experiment. Subsequently, New Lisbon Telephone Company established New Lisbon Broadband and Communications, LLC (“NLBC”) to oversee operation, management, and extension of the company’s broadband Internet offerings and to apply for participation in the Connect America Fund’s Rural Broadband Experiments grant program.
- **December 5, 2014** - The FCC released a Public Notice announcing “provisionally selected” projects which included one project by New Lisbon Telephone Company in Indiana for \$37,695 to deploy broadband in 3 census blocks.¹
- **December 9, 2014** – Representatives from JSI begin the initial preparation to obtain from the Indiana Utility Regulatory Commission (“IURC”) a Certificate of Territorial Authority (“CTA”) and designation as an Eligible Telecommunications Carrier (“ETC”).
- **December 16, 2014** – Call is held with John Greene of NLBC and JSI to discuss data required for the CTA and ETC applications and the need to have NLBC engage its local counsel, Parr Richey, to assist in preparing the applications. John Greene contacts Parr Richey.
- **December 19, 2014** – New Lisbon Telephone submitted and certified three consecutive years of audited financial statements, and a description of the technology and system design, including a network diagram certified by a professional engineer, with an explanation that NLBC will be the ultimate provider and is wholly owned by the telephone company.
- **December 22, 2014** – JSI coordinates with Parr Richey to schedule a call after the holiday season to discuss the CTA and ETC applications.
- **January 12, 2015** – Call is held with John Greene, JSI and Parr Richey to review the application process and determine the additional data needed for the applications. Some of this additional data was not readily available since NLBC was the first venture for New Lisbon Telephone outside of its ILEC area and several outstanding issues such as network design and pricing had to be addressed before the applications could be drafted. Also, while the CTA application process at the IURC is relatively straightforward and typically subject to an expedited schedule, petitions for ETC designation are much more involved. When NLBC contacted Parr Richey to assist with its ETC petition, the firm immediately began researching the most recently-filed

¹ See Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadline For Submission of Additional Information, WC Docket No. 10-90, Public Notice, DA 14-1772 (rel. Dec. 5, 2014).

petitions from other carriers. In addition, the firm contacted staff at the IURC and at the Office of Utility Consumers Counsel (“OUCC”) as work on the ETC petition started. Research revealed that no other Indiana carriers had applied to participate in the Rural Broadband Experiments, and no other Indiana carriers had recently sought ETC designation for anything other than the limited purpose of offering Lifeline services. Even in those instances in which only a limited ETC designation was requested, the cases were taking anywhere from five months to 13 months from the filing of the initial petition to issuance of the final order, with the average time appearing to be approximately nine months. When IURC and OUCC staff learned of NLBC’s participation in the Rural Broadband Experiments, they expressed a great deal of interest in and support for the project. However, they also noted that the IURC would be particularly interested in the process because most of the current IURC Commissioners have not had any experience with a “full-blown” ETC designation petition as they have only dealt with Lifeline-only designations, and it became clear that it would be necessary to work very closely with staff to make the process as smooth and expeditious as possible.

- **January 28, 2015** – JSI and Parr Richey coordinate regarding shapefiles and other outstanding items for the draft petition.
- **February 3, 2015** – NLBC submits its Letter of Credit commitment letter to the FCC.
- **February 13, 2015** – An initial draft of the petition package was completed and shared with NLBC management. Then the draft petition and accompanying documentation were shared with OUCC for input before filing with the Commission. The OUCC raised several issues, including 1) whether NLBC should seek ETC designation only in the territory where the provisionally approved Rural Broadband Experiments project would be active or also in the territory corresponding to the additional pending project proposals; 2) the manner in which the accompanying map or maps should be created; 3) the level of specificity necessary regarding the bundled plans and pricing NLBC intended to offer once the project was up and running; and 4) the amount of information and detail NLBC should include regarding Lifeline services, even though there is no Lifeline requirement for provision of broadband services at this point. The OUCC also pushed on the need to include a 5-year plan as part of the petition, apparently uncomfortable in accepting that the 5-year plan requirement had been specifically waived by the FCC. NLBC, working with both its Indiana and Washington, D.C.-based regulatory counsel and consultants, made the requested changes and additions to the draft petition and provided all other necessary information and documentation within two weeks of the initial review of the first draft.
- **March 3, 2015** - The ETC petition was filed. The application for CTA was filed simultaneously with the ETC petition, and it was NLBC’s understanding that the IURC, generally supportive of Indiana utilities’ participation in federal grant funded projects and specifically aware that NLBC’s ability to receive federal funding for this particular

project would depend upon quickly obtaining ETC designation, would informally consolidate the CTA and ETC matters in an effort to expedite them both.

- **March 20, 2015** - The IURC staff was apparently unable to follow through with the planned course of action. Instead, the IURC issued a notice of prehearing conference on March 20, 2015. The prehearing conference itself was set for April 15, 2015. Immediately upon receipt of the notice, NLBC's counsel contacted the OUCC and worked to create an acceptable motion to approve an expedited procedural schedule under which the prehearing conference would be waived, the Commission would take administrative notice of the pending CTA application (so that lack of a CTA would not slow the ETC designation review process), and the April 15, 2015 conference would be converted to a final evidentiary hearing. The OUCC made several follow-up suggestions to the proposed motion drafted by NLBC's counsel and insisted that a phone conference with the administrative law judge take place before the motion was filed. Nevertheless, NLBC was able to file the motion within a week of receiving the original notice setting the prehearing conference.
- **April 15, 2015** - The IURC granted NLBC's request, but the delay caused by the OUCC's continued amendments to the motion and request for a phone conference with the administrative law judge made it impossible for the IURC to publish the required public notice far enough in advance of April 15 to meet legal requirements. Therefore, the IURC pushed the hearing to May 6, 2015.
- **April 23, 2015** - While the IURC approved NLBC's request to rely upon its verified petition as its case-in-chief, avoiding the need to draft and submit written testimony that would have pushed the proceedings back even further, the IURC decided on April 23, 2015 to issue a "request for clarifying information" regarding the petition. The information sought through the request for clarifying information appeared to have already been supplied in the original petition. Nevertheless, NLBC compiled additional information and submitted the information within a week.
- **May 6, 2015** - Despite NLBC having already provided supplemental information in response to the Commission's April 23 request, yet another request for additional information was made by the presiding officers during the May 6, 2015 evidentiary hearing. Questions apparently remained as to whether the proposed ETC territory overlapped with any other rural carriers in the state. NLBC stated that its only uncertainty regarding territory overlap was whether one extremely small portion of the proposed territory might technically overlap with one other rural carrier's territory. However, NLBC had discussed the matter with that carrier, and neither side believed that there was any overlap, at least at a functional level. This agreement notwithstanding, the IURC wanted more conclusive evidence. Counsel for NLBC requested allowance to file additional information on the issue post-hearing, and the request was granted. Unfortunately, the IURC had additional questions regarding the bundling and pricing options NLBC would offer customers once the proposed project

was up and running. NLBC tried to explain that precise pricing and service information would be impossible to provide until actual build-out of the fiber network had been substantially completed and costs could be more accurately calculated. Nevertheless, NLBC agreed to provide supplemental information as soon as possible.

- **May 11, 2015** - Once the hearing was complete and the additional requests of the presiding officers communicated to NLBC management, the company immediately began working to finalize its proposed pricing and bundling options for service related to the project. The Board of Directors approved a tentative pricing schedule, but since final prices would necessarily be dependent upon final build-out costs that simply were not available, NLBC had no choice but to ensure that the tentative prices remain confidential. Premature availability of the prices to the public would have created a significant competitive disadvantage in the market while potentially creating serious issues with current and would-be customers who would undoubtedly be upset if the tentative pricing on which they relied in making purchasing decisions differed from the final pricing advertised once the true cost of service could be determined. Within five days of the May 6 hearing, NLBC's counsel had drafted a 21-page proposed final order on the ETC petition, a supplemental response addressing the questions raised by the presiding officers during the hearing, and a proposed confidentiality motion to protect the pricing information. The final order, supplemental response, and confidentiality motion were provided to the OUCC for review on May 11, 2015.
- **May 22, 2015** – On May 22, 2015, the OUCC responded with a list of concerns regarding the confidentiality motion but did not offer any comment whatsoever on the proposed final order. NLBC's counsel amended the confidentiality motion to respond to the OUCC's concerns and awaited comment on the final order, knowing that the OUCC's input in that regard would be extremely important in helping to gain the Commission's approval.
- **June 22, 2015** - It would be another three weeks before the OUCC's input on the proposed order and approval of changes made to the other documents were provided. The suggestions regarding the proposed order were minimal and entirely non-substantive. Touch-ups were made, and the proposed order was submitted to the IURC on June 22, 2015, along with the supplemental response and request for confidential treatment.
- **July 16, 2015** – The Commission granted NLBC's request for confidential treatment, and NLBC provided the confidential information to the Commission on the very same day. From that point forward, no further information was requested from NLBC, and the Commission possessed all the materials and information it felt necessary to make its final decision regarding NLBC's ETC petition, including the CTA that had by then been granted in the companion cause.

Despite having everything it needed, the Commission would eventually take more than two months before finally issuing its order granting ETC designation to NLBC. During that time, NLBC's counsel repeatedly checked in with the administrative law judge seeking status updates and an estimated date for the final order while gently reminding that time was of the essence for NLBC in successfully obtaining the federal grant funds. On one occasion, the administrative law judge indicated that approval of NLBC's final order would be an agenda item for the Commission's September 2, 2015 conference. When the agenda was released to the public, NLBC's cause was absent, and its counsel was then led to believe it would definitely appear on the September 9, 2015 conference. But once again, without explanation, NLBC's cause did not make the September 9 agenda. The Commission then cancelled its September 16 conference, and finally, NLBC appeared on the September 23 agenda.

- **September 23, 2015** - The order was approved during the September 23 conference, and NLBC notified the FCC immediately thereafter.

CONCLUSION

Neither NLBC nor any members of the team working with NLBC on its ETC petition ever imagined that the process, which began in December 2014, would ultimately last through the bulk of September 2015. Moreover, neither NLBC nor any members of its team can explain why the procedure became as protracted as it did. From the beginning, NLBC worked diligently and cooperatively with the IURC and OUCC to provide as much information as it could, even upon what sometimes appeared to be repetitive requests. NLBC also took great care to explain how vital it would be for the ETC designation to be granted as quickly as possible. The IURC and OUCC both expressed a sincere desire to expedite the process, and from the filing of the petition up to the evidentiary hearing, they provided substantial assistance in that regard. However, once NLBC submitted its proposed final order to the OUCC for comment and approval, the responsiveness appeared to fade, and the process began to slow. Oddly, the process appeared to slow even further once all necessary materials had been provided to the IURC. The delay in considering the final order, including the apparent bump from the September 2 agenda to the September 23 conference, was unexpected and never explained.² However it certainly was not for want of effort and persistence on the part of NLBC, its attorneys, or consultants.

² The September 16 conference was canceled which added one week.