

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Connect America Fund |) | WT Docket No. 10-90 |
| |) | |
| Universal Service Reform – Mobility Fund |) | WT Docket No. 10-208 |

**VTEL WIRELESS, INC.
REQUEST FOR LIMITED WAIVER AND EXTENSION OF
MOBILITY FUND PHASE I PUBLIC INTEREST OBLIGATIONS**

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VTel Wireless, Inc., (“VTel”), pursuant to Section 1.3 of the Commission’s rules hereby requests a limited waiver and extension of the three-year construction deadline for VTel to construct a fourth generation (“4G”) network and submit drive test data for the Essex, Vermont census tract (Tract No. T50009950200) (“Essex tract”) for which VTel was the winning bidder in Auction 901 for Mobility Fund Phase I (“MFI”) support.¹ Specifically, VTel requests that the Commission waive Sections 54.1006(b) and (c) of the rules and extend the construction and applicable reporting deadline until June 10, 2019, 90 days from the current March 12, 2019 construction deadline (“MFI Completion Deadline”).²

VTel has experienced delays beyond its control in completing network deployment in the Essex tract, despite its aggressive efforts to meet the Commission’s three-year MFI Completion Deadline. As discussed more fully below, a 90-day extension of the MFI Completion Deadline, until June 10, 2019, would provide VTel the time needed to meet its obligations in the Essex

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. § 54.1006(b), (c).

tract. Grant of the requested relief will fulfill the Commission's goal of accelerating the deployment of mobile broadband services to unserved areas and serve the public interest.

I. INTRODUCTION AND BACKGROUND

VTel is a Springfield, Vermont-based wireless communications company that is building a 4G LTE wireless network across Vermont and portions of western New Hampshire. To date, VTel has invested over \$100 million of its own capital towards its goal of bringing affordable high-speed Internet to the most unserved and under-served areas of Vermont.

VTel participated in Auction 901, and on October 31, 2012, the Commission announced that VTel was a winning bidder for MFI support to construct a 4G wireless network to provide coverage to 46 census tracts in Vermont.³ Specifically, VTel bid to receive approximately \$2.05 million in MFI support to provide 4G LTE services to over 940 unserved road miles in rural and underserved areas of Vermont.⁴ In the Essex tract in particular, VTel bid to receive \$49,816.26 in MFI support to construct a 4G network.⁵ On March 11, 2016, the Commission authorized VTel to receive its initial disbursement of MFI support.⁶ As a result, the three-year deadline for the construction and drive testing of VTel's 4G network in the supported census tracts is March 12, 2019.⁷ Under the Commission's rules, MFI recipients constructing 4G networks must complete construction of a 4G network, conduct drive testing, and submit a report demonstrating

³ See *Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901*, Public Notice, AU Docket No. 12-25, 27 FCC Rcd 12031 (2012) ("Auction 901 Closing Public Notice").

⁴ See *id.*

⁵ See *Mobility Fund Phase I Support Authorized for Eleven Winning Bids; Default on 35 Auction Winning Bids Determined*, Public Notice, AU Docket No. 12-25, 31 FCC Rcd 1721 (2016).

⁶ See *id.*

⁷ See *id.*; 47 C.F.R. § 54.1006(b).

coverage for 75% or more of the designated eligible road miles in the relevant census tract by the applicable construction deadline.⁸

VTel has deployed 15 4G LTE sites within or providing service to Essex county, including two sites in the Essex tract. Despite these efforts, VTel's coverage in the Essex tract does not currently meet the project requirements as anticipated, and VTel will not complete the additional required construction and drive testing to meet the project requirements by the March 12, 2019 MFI Completion Deadline. As explained in further detail below, VTel has encountered significant delays outside of its control that have severely impacted its ability to meet the deadline for the Essex tract. Accordingly, VTel respectfully requests a 90-day extension of the MFI Completion Deadline.

II. WAIVER STANDARD

Pursuant to Section 1.3 of the Commission's rules, the Commission may waive any provision of the rules for good cause or where, due to special circumstances, deviation from a rule would better serve the public interest and the Commission's purposes than strict enforcement of the rule.⁹ VTel meets this standard. As demonstrated herein, grant of the requested limited waiver and extension of time is warranted and will serve the public interest by allowing VTel to complete construction of its 4G network in the Essex tract to provide much needed mobile voice and broadband services to subscribers and roamers in this rural area of Vermont.

⁸ 47 C.F.R. § 54.1006(b).

⁹ See 47 C.F.R. § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972); *In the Matter of Leaco Rural Telephone Cooperative, Inc. and Pine Belt Cellular, Inc.*, Order, 31 FCC Rcd 9001 (2016) ("*Leaco/Pine Waiver*") (waiving performance deadlines for two recipients of MFI support due to permitting delays and unexpected NEPA review issues).

III. CIRCUMSTANCES BEYOND VTEL'S CONTROL DELAYED THE MFI PROJECT IN THE ESSEX TRACT.

Although VTel has been consistently and diligently working to deploy a 4G network since the FCC awarded VTel MFI support in March 2016, circumstances outside of VTel's control have caused significant delays. Such delays have had the cumulative impact of rendering VTel unable to meet its MFI Completion Deadline for the Essex tract. These delays constitute special circumstances beyond VTel's control, warranting deviation from the Commission's rules and grant of the requested limited waiver and extension.

VTel has made steady efforts to meet its deployment deadline for its 4G network in the Essex tract. As explained in its auction application, VTel planned to achieve coverage in the awarded census tracts with a mixture of "macro" cell sites mounted on communications towers, rooftops, silos, and similar structures and "micro" or "metro" cell sites mounted on utility poles and other structures.¹⁰ VTel also has been preparing its LTE Core, 911 services, roaming, towers, and backhaul equipment to ensure that all will be functional when consumers can use the fully deployed network.

However, VTel has experienced a number of delays in deployment and network coverage verification due to severe winter weather.¹¹ Specifically, the severe winter weather events caused multiple delays in scheduling and performing drive testing, when roads were impassible and equipment would not function properly. In turn, this limited the time available to deploy the

¹⁰ See VTel Wireless, Inc., FCC Form 680, File No. 0005478844.

¹¹ See, e.g. *Total Snow Far Surpasses Average in Parts of Vermont, Maine*, AP, <https://www.vnews.com/Total-snow-far-surpasses-average-in-parts-of-Maine-Vermont-23542704> (Feb. 16, 2019); *Vermont Snowfall Totals from Winter Storm Harper*, Burlington Free Press <https://www.burlingtonfreepress.com/story/news/local/vermont/2019/01/21/vermont-snowfall-totals-winter-storm-harper/2635867002/> (Jan. 20, 2019) (reporting 14.4 inches of snow in Essex Center following a January 2019 snow storm).

additional equipment necessary to improve coverage based on the drive test results. Although snow is typical in Vermont in the winter months, the delays exceeded VTel's reasonable expectations and thwarted VTel's best efforts toward meeting the MFI Completion Deadline.

A limited extension will give VTel the time needed to meet the Commission's requirements with respect to the Essex tract. VTel anticipates that the extension will allow VTel to complete network deployment and drive testing and submit the necessary coverage data by the revised deadline. Specifically, VTel plans to deploy a repeater, which will enable VTel to meet the 75% coverage threshold. VTel has expended significant resources and efforts to get to this point, and is on the cusp of being able to complete the project. Accordingly, the Commission should grant the limited waiver and extension.

IV. GRANT OF THE REQUESTED LIMITED WAIVER AND EXTENSION OF TIME IS WARRANTED AND WOULD SERVE THE PUBLIC INTEREST.

Good cause exists to grant VTel an additional 90 days to complete construction of its 4G network, drive testing, and submission of coverage demonstration. As discussed above, VTel encountered material and unforeseeable delays in network deployment and testing, which it was unable to overcome despite best efforts. Indeed, grant of the requested limited extension is required for VTel to complete deployment of its 4G network in the Essex tract. Grant would therefore serve the public interest by enabling VTel, consistent with the FCC's MFI objectives, to deliver next generation services to consumers in this rural county currently on the other side of the digital divide. Further, grant would be consistent with Commission precedent. Finally, strict enforcement of the rule would impede efforts to deliver next generation services in the Essex tract.

First, grant of the limited waiver request would serve by public interest by allowing VTel to complete deployment of 4G services to rural Vermonters. In the last three years, VTel has

worked diligently and invested considerable resources to deploy next generation services to consumers who currently lack access. This includes efforts to serve residents in Essex County. With only 6,203 residents, Essex County is the least-populous county in Vermont according to recent census data.¹² VTel is proud to deliver 4G services to some of the most remote areas of the state, notwithstanding the unique challenges that accompany this effort. VTel has already deployed service to approximately 50% of the Essex tract and has developed an achievable plan to realize its remaining performance objectives for this tract. An additional 90 days would enable VTel to complete deployment consistent with the FCC's objective to "expand current and next generation mobile services to areas without such services today."¹³ Accordingly, grant of VTel's request would benefit the public interest and further MFI objectives by enabling VTel to deploy advanced wireless services to a rural and underserved area in Vermont.

Second, grant of the requested relief would be consistent with Commission precedent. The Commission has previously granted limited waivers and extensions of time to MFI recipients that have encountered "unusual delays beyond their control in their construction processes"¹⁴ and where granting relief would be "consistent with the objectives of Mobility Fund Phase I."¹⁵ In this case, VTel faced material and unforeseen delays beyond its control arising from extreme weather events. And, as discussed above, VTel's deployment plans would also be consistent with the MFI objectives by serving rural and underserved areas. In the *Leaco/Pine*

¹² Vermont Counties by Population, https://www.vermont-demographics.com/counties_by_population (last visited Mar. 2019).

¹³ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 304 (2011).

¹⁴ *Leaco/Pine Waiver* at ¶ 1 (granting Leaco Rural Telephone Cooperative, Inc. and Pine Belt Cellular, Inc. 90-day and 180-day extensions, respectively, to complete the buildout of their Mobility Fund Phase I supported 3G networks).

¹⁵ *Id.* at ¶ 19.

Waiver case, the Commission further found that waiver was warranted as the applicants were in a position to satisfy the requirements “within a relatively short time beyond the deadline,” and the requested extension period was “reasonable in relation to the nature of the delays they experienced.”¹⁶ Here, VTel’s extension request is half as long as that requested by Leaco, and is a safe estimate of the relatively short time needed to complete the project. Accordingly, grant of VTel’s waiver request would be consistent with prior Commission action.

Third, strict enforcement of the requirements of Sections 54.1006(a) and (c) and a denial of VTel’s requested limited waiver and extension of time would be inequitable, unduly burdensome, and contrary to the public interest.¹⁷ Absent the MFI support, VTel would be delayed in deploying a 4G network to the Essex tract, and at worst may be foreclosed from completing deployment. By denying VTel’s waiver request, the Commission would be hampering the central goals of the MFI program and potentially impairing delivery of critical wireless services to consumers in the Essex tract.

¹⁶ *Id.* at ¶ 18.

¹⁷ 47 CFR § 1.925(b)(3).

V. CONCLUSION

VTel is committed to serving the public interest and the Commission's policy goals by deploying 4G services to previously unserved areas in rural Vermont. VTel, however, has encountered delays beyond its control that prevent VTel from completing deployment within the Commission's timeline. VTel expects to complete the MFI project in the Essex tract with a brief, 90-day extension of time. VTel respectfully requests that the Commission grant this request in furtherance of the public interest.

Respectfully submitted,

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