

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

**EMERGENCY REQUEST FOR EXPEDITED TREATMENT**

**PETITION OF ZENDA TELEPHONE COMPANY**

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”),<sup>1</sup> Zenda Telephone Company (“Zenda” or the “Company”) hereby requests an expedited waiver of the Commission’s requirement that geocoded broadband location data filed in the HUBB can only be certified if the location deployment data was dated in the reporting period for the year. Zenda is also seeking clarification that its late-filed locations will still count towards its broadband build-out obligation, and the locations will be included in the final count when it is time to certify completion. Zenda is a very small rate-of-return provider receiving Alternative Connect America Model (“A-CAM”) support for 149 locations in its study area. Due to circumstances described below, 37 locations were not filed during the reporting period of calendar year 2017 that was required to be certified by March 1, 2018, and the Company was unable to

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<sup>1</sup> 47 C.F.R. § 1.3.

certify the data in the HUBB – the certification functionality was not available when Zenda attempted to upload and certify the locations shortly after the March 1 deadline. Zenda will be placed in an extremely precarious situation if it is not able to certify the locations and include them in its build-out completion, because the company serves a small rural population and will not under any reasonable circumstances be able to “make up” the locations in other parts of its A-CAM funded study area in the remainder of the years that it has to complete the build-out obligation. Zenda is very concerned that if it is not permitted to ultimately include these locations in its build-out total, it will have to “give back” a significant amount of support in the A-CAM true-up process and be subject to various penalties for noncompliance—despite having completed the deployment in 2017. Zenda respectfully requests that the Commission allow it to certify the 37 locations filed in the HUBB which were deployed during the 2017 calendar year, or, alternatively, provide assurance that these locations will ultimately be counted in its build-out obligation when it is time to demonstrate completion.

## **I. Background**

Zenda is a small rural rate-of-return carrier serving the community of Zenda in south central Kansas. The town of Zenda has a population of approximately 90 people, and the Company’s entire study area currently has only approximately 129 access lines. In an area as sparsely populated as Zenda’s, the Company does not see how it would be possible to “make up” sufficient locations so as to not face potential non-compliance penalties for failing to deploy broadband to the 149 A-CAM-funded required locations if it is not permitted to certify or include locations from 2017.

On March 1, 2018, the deadline for the first HUBB filing, Zenda uploaded and certified location information for 130 locations in Kingman County. On March 14, 2018, Zenda realized

that some locations in Kingman County, as well as the Company's Harper County locations, had been inadvertently omitted from the data that was certified on March 1. A Zenda employee later found the accidentally omitted locations, immediately uploaded them in the HUBB, and then attempted to certify. Even though the locations had the same 2017 deployment date as the certified locations, Zenda received an error stating "Unable to certify as this filing year is closed." Shortly thereafter, Zenda reached out to USAC about this situation. USAC replied, "While carriers can continue to load locations into the system, they will not be able to certify at this time." Zenda asked USAC about the certification again on a HUBB webinar in January 2019. USAC responded after the webinar by explaining that the locations were late filed, but they are considered a "warning" and the HUBB will accept records with warning. USAC further explained that there was no need to correct the deployment date, and "the date of deployment is what it is."

Zenda asked USAC for clarification again in February 2019, and it sought guidance on how to certify the 37 locations. USAC responded that Zenda would need to file a waiver with the FCC to allow USAC to open the previous deployment year for certification. In another conversation with USAC about the issue, USAC staff indicated that the locations would count toward the build-out obligation, so long as a waiver with the FCC is submitted. Therefore, Zenda hereby requests that the FCC direct USAC to accept its late-filed locations, permit the certification, and clarify that these locations will be included in the Company's final buildout certification.

## **II. Zenda's Request is in the Public Interest**

It is in the public interest for the FCC to grant Zenda's very narrow and limited request and permit USAC to accept certification of its late-filed locations so that they can be counted in the Company's final buildout certification. Under Section 1.3, generally the Commission may

exercise its discretion to waive an FCC rule “for good cause shown.”<sup>2</sup> Waiver is appropriate where the “particular facts would make strict compliance inconsistent with the public interest.”<sup>3</sup> The FCC may grant a waiver of its rules where the requested relief would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>4</sup>

Zenda is an extremely small rate-of-return company, and only has 149 locations eligible for A-CAM support in its study area. Furthermore, Zenda does not have competition from any other unsubsidized broadband provider. Residents and businesses would not have an alternative provider if Zenda were to forfeit A-CAM support for failing to meet its build-out obligations, which could be the case if the FCC does not provide assurance that the late-filed locations can be certified and counted towards Zenda’s build-out obligation. Zenda’s population cannot afford to lose its only broadband provider, and there is no business case for Zenda (without adequate A-CAM support) or a competitor to deploy high-speed broadband to the rural locations in the Company’s study area. In the absence of A-CAM support, broadband service would cease to exist.

Most importantly, Zenda **already deployed** broadband to the 37 locations in question as of July 1, 2017. The Company is not trying to seek relief from deploying services, or from reporting the deployment of services – it simply wants to be able to certify locations that it already deployed but inadvertently omitted on its very first HUBB filing, when Zenda’s employees were still learning the process. Even if it would not be able to count the locations in its 2018 certified HUBB report, it should not be prevented from certifying and counting them toward the final build-out

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<sup>2</sup> 47 C.F.R. § 1.3.

<sup>3</sup> See *AT&T Wireless Services, Inc. et al. v. Federal Communications Commission*, No. 00-1304 (D.C. Cir. 2001), citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

<sup>4</sup> See generally, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); see also *Northeast Cellular* (D.C. Cir. 1990).

obligations. The FCC and USAC may want to consider taking steps to ensure that there is a streamlined process to permit HUBB filers to certify late-filed locations, as other model-based support recipients will surely encounter situations where they inadvertently omitted or made errors on locations in earlier reporting periods.

It is in the public interest to count Zenda's uncertified locations toward its final build-out obligation. Zenda does not see any way that it might be able to make up the difference by "finding" additional locations. Its study area is simply too small and too sparsely populated, and there are no known factors that would indicate that multiple new homes or businesses will emerge by the end of the buildout timeframe—in fact, only about one new home is built in Zenda every five or so years. Zenda estimates that with reporting every remaining possible location except for the 37 late-filed locations, the Company will still be at risk of losing so much A-CAM support, it will very likely put the Company out of business leaving *all* residents and businesses in the study area without critical telephone and broadband service. For an administrative technicality that Zenda immediately sought guidance to rectify once it realized that 37 locations had been omitted from its March 1, 2018 filing, any amount of forfeited A-CAM support would be too much to accept without seeking waiver.

### **III. Conclusion**

For the reasons stated herein, Zenda respectfully requests that the Commission grant this limited petition and instruct USAC to permit Zenda to certify its late-filed 2017 broadband deployment data. This would allow Zenda to demonstrate completion with its broadband build-out obligation for the duration of A-CAM funding. Alternatively, the Commission should at the very least provide assurance that Zenda's late-filed locations will count towards its build-out obligations and will be counted when it comes time to certify completion.

Respectfully Submitted,

/s/ John C. Michon

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