

**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
)	
Rural Broadband Experiments)	WC Docket No. 14-259

**PETITION OF LAKE COUNTY MINNESOTA
FOR RELINQUISHMENT OF ITS STATUS
AS A RURAL BROADBAND EXPERIMENTS SUPPORT RECIPIENT
AND FOR A SECTION 1.3 WAIVER OF THE DEPLOYMENT SCHEDULE**

Lake County Minnesota (“Lake County”) respectfully submits this petition to the Federal Communications Commission (“Commission”) seeking to relinquish Lake County’s status as a Rural Broadband Experiment (“RBE”) support recipient. As discussed below, Lake County has at all times acted in good faith to fulfill the requirements established under the *Rural Broadband Experiments Order*¹ and obligations under its *RBE Grant Notice*,² and more important, it has succeeded in meeting the underlying goal of the RBE program by dramatically expanding the availability of advanced broadband capabilities and services in unserved and underserved areas of

¹ *In the Matter of Connect America Fund*, WC Docket No. 10-90, *Report and Order and Further Notice of Proposed Rulemaking (Rural Broadband Experiments Order)*, released July 14, 2014.

² *FCC Public Notice, Rural Broadband Experiment Support Authorized for Winning Bid Submitted by Lake County, Minnesota D/B/A Lake Connections (Grant Notice)*, WC Docket No. 10-90, WC Docket No. 14-259, released December 12, 2016.

its community. This would not have occurred if Lake County had not built its network. Now, however, in accordance with a Memorandum of Understanding with the Rural Utilities Service (“RUS”),³ Lake County has entered into an agreement to sell its broadband network. Lake County therefore seeks to relinquish its status as an RBE support recipient and to remit to the Commission an amount of money equal to the RBE grant money received to date that Lake County has not spent in furtherance of providing and expanding broadband availability throughout its community. Granting this request would be consistent with the Commission’s rules and in the public interest.

I. BACKGROUND

In 2010, Lake County applied for and obtained a federal stimulus grant and loan combination totaling \$66,369,064 from the Rural Utilities Service under the Broadband Initiatives Program (“BIP”) established by the American Recovery and Reinvestment Act of 2009. Lake County sought these funds in order to help support the construction of a fiber optic broadband fiber network throughout the County and parts of St. Louis County, Minnesota. This project was aimed at bringing a state-of-the-art broadband system to the rural unserved and underserved communities in these counties,⁴ and all of the advanced broadband services and capabilities that the system could enable and support, including sufficient bandwidth to simultaneously drive and support economic development, enhanced governmental, education, healthcare, and, public safety services.

³ Memorandum of Understanding between Lake County and the Rural Utilities Service, dated August 31, 2017.

⁴ These Counties are comprised of eight cities, twelve townships and large areas of unorganized territories.

On December 12, 2016, the Commission awarded Lake County an RBE support grant of \$3,491,280.⁵ Lake County obtained the RBE funding to help supplement its ongoing activities to extend and provide broadband capabilities and services to its rural underserved and unserved community.

While Lake County has been largely successful in advancing its goal of dramatically increasing the availability of affordable broadband services and capabilities throughout much of its area, the County has been beset throughout this process with unexpected challenges and delays, including barriers and disruptions that have impaired the County's ability to fulfill its economic commitments while also serving the best overall interests of its community.

Even with the RUS funding and the RBE grant, the County faced a shortfall in capital funding. The County sought, but was unable to secure, favorable financing that would allow it to continue to operate and expand its network. Given these circumstances, in 2017 Lake County entered into collaborative discussions with RUS to develop a highly structured sales process, under which RUS would defer Lake County's outstanding principal and interest payments on its BIP loan while Lake County sought out and obtained an established qualified broadband provider to purchase the Lake County network, with the proceeds of the sale going to RUS in satisfaction Lake County's obligations. Lake County would continue to provide services throughout the bidding and sale process.

⁵ *Grant Notice.*

Consistent with these discussions, on June 13, 2017, Lake County adopted a resolution to commence a bidding process to select a purchaser that would best provide continuing quality and expansion of broadband services to Lake County customers.⁶

On August 31, 2017, the County and RUS entered into a Memorandum of Understanding (“MOU”) providing the framework for a final settlement between the County and RUS with respect to all amounts that the County owes to RUS under the BIP loan. Under the terms of the MOU, RUS has agreed that RUS will (i) continue to defer principal and interest owed to RUS until the County’s sale of the network, (ii) accept the proceeds of the sale of the network in full satisfaction of all amounts owed by the County to RUS under the RUS Funding documents, and (iii) release RUS’s lien on the network upon receipt of the proceeds of the sale of the Network.

In December 2018, Lake County selected Pinpoint Holdings as the winning bidder and entered into a purchase agreement for the sale of the Lake County network. Throughout the bidding and sales selection process, the County retained its RBE support recipient status, as it wanted to retain the option for the winning bidder to utilize the RBE funds for continued expansion of services. Pinpoint has indicated, however, that it does not desire to continue with the RBE grant program upon completion of the sale. Therefore, Lake County is seeking to relinquish its RBE support recipient status and return non-expended grant funds to the Commission.

II. RELINQUISHING RBE STATUS

The *Rural Broadband Experiments Order* creating the RBE program did not establish a specific process for an entity to discontinue its participation in the program. In the absence of such a process, Lake County submits that it would be reasonable to follow the discontinuation process

⁶ http://www.co.lake.mn.us/document_center/Comm_Doc_Center/2018-7-24%20Press%20RELEASE%20.pdf

that the Commission utilizes in similar situations in which a carrier seeks to relinquish Connect America Funds.

For example, in a *Public Notice* on the Connect America Phase II Auction, the Commission indicated that a provider seeking to relinquish its Connect America Fund support must discontinue its ETC status pursuant to the requirements of Section 214 of the Communications Act and the Commission's implementing regulations in Section 54.205.⁷

A. Section 214(e)(4) Relinquishment of ETC Status

Under both Section 214(e)(4) of the federal Communications Act and the Commission's implementing regulations, entities with state issued ETC certifications, such as Lake County, may relinquish their ETC designation upon approval of the applicable state public utility commission ("PUC").

Consistent with this requirement, and concurrent with the Commission's action on this petition, Lake County is working with the Minnesota PUC to comply with all requirements for relinquishing its ETC status. As part of this petition, Lake County seeks to coordinate with the Commission to establish a process to ensure that any actions in surrendering its ETC status before the Minnesota PUC do not inadvertently create any procedural deficiencies in Lake County's RBE status while this petition is pending.

B. Section 63.71 Discontinuation of Service Not Required

Lake County does not itself provide "telecommunications services" as defined under the federal Communications Act. Instead, Lake County satisfies its obligation to furnish voice telephony under its RBE award (and ETC status) through a contractual agreement with Contel

⁷ Connect America Fund Phase II Auction Public Notice, at p. 9, released on July 10, 2018. <https://docs.fcc.gov/public/attachments/DA-18-714A1.pdf>

Systems, Inc (“CSI”). In 2017, as part of its agreement to provide services for Lake County, CSI acquired all of the telecommunications services and assets of Lake Communications, an affiliate of Lake County, that had previously been meeting the County’s voice telephony requirements. The transfer of the assets and services from Lake Communications to CTC was approved under the Commission’s 214 process on April 20, 2017.⁸ Accordingly, Lake County will not be required to obtain any prior authorization under Section 63.71 in order to effectuate its relinquishment of RBE grant recipient status.

C. Compliance with RBE Service Quality Requirements

Throughout its period as an RBE grant recipient, Lake County has fully met or exceeded all of its services obligations related to the broadband services including speed, latency, usage, and pricing, as set out in the *Rural Broadband Experiments Order* and in the terms of its *RBE Grant Notice*. On August 1, 2018, Lake County made its required 15-month certification that it had completed its 25% build-out milestone by serving 3,102 locations⁹

III. RBE GRANT FUNDS TO BE RETURNED

As indicated, the RBE program rules adopted in the *Rural Broadband Experiments Order* do not prescribe a process for a party to voluntarily relinquish RBE status. Among the areas not addressed in the RBE rules is the treatment of grant funds where the recipient relinquishing RBE status has properly spent money in support of the RBE objectives. The RBE program requires

⁸ *Notice of Domestic Section 214 Authorization Granted*, WC Docket No. 17-64, DA 17-374, April 20, 2017.

⁹ See Lake County’s annual filings of FCC Form 481. On March 6, 2019, the Wireline Competition Bureau inadvertently issued a letter of default finding that the County had not met its build-out milestone but this letter has since been rescinded in recognition that the County’s 85% build-out milestone is not until January 2020.

participants to provide a letter of credit (“LOC”) for the recovery of funds in the event of a termination as a result of default, but Lake County is voluntarily relinquishing its RBE status, not terminating for default, so resort to Lake County’s LOC is not warranted. Instead, as discussed below, Lake County should be able to retain funds in the amount equal to the amount of money that it properly spent in meeting its RBE grant obligations that satisfied its initial fifteen-month milestone. In the alternative, Lake County seeks a waiver under Section 1.3 of the Commission’s rules of the LOC termination provisions of *the Rural Broadband Experiments Order*. As demonstrated below, a waiver in this instance is for good cause and is in the public interest.

To date, Lake County has received \$1,633,393.53 in RBE support payments out of its total RBE grant award of \$3,491,280. As indicated, on August 1, 2018, Lake County made its required 15-month certification that it had completed its 25% build-out milestone by serving 3,102 locations, which is equal to a 36.51% of Lake County’s eligible RBE locations under the program. Lake County properly and in good faith expended time, effort, and County funds in support of extending broadband services to these locations in fulfillment of its RBE obligations. Lake County’s actions furthered the underlying public interest goals of the RBE program (and the Connect America Fund in general) by extending advanced broadband capabilities and services into rural areas that would not have otherwise been served. Accordingly, Lake County proposes that, in conjunction with its relinquishment of RBE grant status, the Commission and Lake County enter into an agreement under which Lake County would retain 36.51% (\$1,274,666.30) of the total RBE grant support it was awarded and return any funds that it has received beyond that amount.¹⁰

¹⁰ Lake County also requests that the Commission immediately direct USAC to discontinue issuing any further RBE support payments to Lake County in recognition that Lake County is relinquishing its RBE recipient status.

Lake County's retention of this amount of its total RBE grant award is reasonable and justified. While the County was not able to complete the network buildout there can be no argument that the County's actions did not appreciably advance the Commission's underlying goal of expanding rural broadband availability. The County should not now be penalized for this action by being required to remit money that it spent in furtherance of these efforts.

IV. CONCLUSION

Based on the foregoing, Lake County respectfully requests that Commission grant this petition and associated waiver(s) for Lake County to relinquish its RBE grant recipient status.

Respectfully Submitted,

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