

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

**RED RIVER RURAL TELEPHONE ASSOCIATION DBA
RED RIVER COMMUNICATIONS
PETITION FOR WAIVER OF THE ELECTION DEADLINE FOR A-CAM II
AND REQUEST FOR A REVISED A-CAM II OFFER**

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ Red River Rural Telephone Association dba Red River Communications (“Red River” or the “Company”) hereby requests that the Commission grant an expedited limited waiver of the July 17, 2019 deadline for the rate-of-return company to elect Alternative Connect America Model II (“A-CAM II”) support² to allow the Wireline Competition Bureau (“Bureau”) sufficient time to consider revising the A-CAM II offer made to Red River in light of the evidence provided herein and, upon finding the evidence to be sufficient, to issue a revised A-

¹ 47 C.F.R. § 1.3.

² See *Wireline Competition Bureau Issues Corrected Alternative Connect America Model II Offer to 37 Companies, Extends the Election Deadline, and Seeks Comment of Location Adjustment Procedures*, WC Docket No. 10-90, DA 19-504 (rel. June 5, 2019).

CAM offer to Red River that provides support in areas where it is currently eliminated due solely to erroneous Form 477 data.³

I. Background

A significant portion of Red River's study area is ineligible for A-CAM II support due to an adjacent municipal incumbent local exchange carrier ("ILEC") broadband provider, the City of Barnesville Municipal Telephone ("City of Barnesville"), submitting incorrect data on its December 31, 2017 Form 477 and overreporting its fiber-to-the-home ("FTTH") broadband. Consequently, Red River's A-CAM II offer was reduced to \$46,116,220 from \$63,357,820, a reduction amount of \$17,241,600. As demonstrated in the attached letter from the City of Barnesville, however, the adjacent ILEC has revised its December 31, 2017 Form 477 so that the data no longer indicates that the ILEC offers service in Red River's study area.

Because of the municipal ILEC broadband provider's inadvertent over-stating of its network abilities, a large portion of Red River's very rural study area currently is unnecessarily eliminated from receiving A-CAM II support. As demonstrated herein, in the context of A-CAM I, when the Bureau was presented with evidence, such as the letter the City of Barnesville has submitted, the Bureau recognized that no competitive overlap existed and provided A-CAM funding in the blocks that previously had been excluded from support due solely to the erroneous Form 477 data. The only difference in this case is that, with A-CAM II, there is no formal mechanism for these types of situations to be addressed.

³ Out of an abundance of caution, before the July 17th A-CAM II election deadline, Red River will be filing its letter accepting the A-CAM II offer, however, as will be indicated in its acceptance letter, it does so with the understanding that the amount of the offer will be adjusted if this petition is granted. Additionally, in the event that other Commission rules or decisions require waiver for this petition to be granted, Red River hereby requests waiver of those rules and decisions.

Accordingly, Red River files this petition demonstrating that it is in the public interest for the Bureau to adhere to the same policies that it applied in previous situations where it no longer considered Form 477 data to be a competitive overlap in the A-CAM when a Form 477 filer submitted a letter informing the Bureau that it had made errors that impacted A-CAM support. Red River urges the Bureau to consistently apply the same policies in this case and recalculate its A-CAM II support offer with the municipal ILEC broadband provider, City of Barnesville, removed from consideration as an unsubsidized competitor. To allow the Bureau adequate time to consider this petition, Red River requests an extension of the July 17, 2019 deadline for submitting A-CAM II election notices until the Bureau can consider the evidence presented therein and recalculate the offer if it determines the evidence to be sufficient.

II. Good Cause Exists to Grant Red River's Waiver

Under Section 1.3, generally the Commission may exercise its discretion to waive an FCC rule “for good cause shown.”⁴ Waiver is appropriate where the “particular facts would make strict compliance inconsistent with the public interest.”⁵ 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.⁶

The FCC has good cause and precedent to grant this petition. Prior to the establishment of a “challenge” process mechanism for A-CAM I, the Commission noted that as A-CAM I was being finalized, a number of carriers “submitted letters noting corrections in Form 477 filings”

⁴ 47 C.F.R. § 1.3.

⁵ 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*”).

⁶ 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).

and directed the Bureau to “review and incorporate as appropriate any Form 477 corrections” so that the updates are reflected in the model.⁷ This precedent was then followed in the *Challenge Order* in which the Bureau granted 40 challenges based on evidence contained in a declaration or affidavit of the challenged provider, some of which were in the form of a letter.⁸ In that context, the Bureau stated, “[w]e find a declaration from the provider subject to challenge to be highly persuasive, because it is a sworn statement by a representative or officer of the challenged provider agreeing with the challenge.”⁹ The Bureau then stated, “[t]he most persuasive form of affidavit was one explicitly stating that the challenged provider does not provide voice or broadband service or does not meet the required service obligations in the challenged census blocks or in an entire state.”¹⁰

The absence of a challenge process for A-CAM II should not prevent the Bureau from being consistent and applying this precedent, especially given the way the public interest is advanced by ensuring that universal service funds are not eliminated in census blocks where filers have informed the Commission of incorrect Form 477 data. Further, the public interest would be advanced in granting this petition because a factually accurate A-CAM II offer will be made to Red River allowing residences and small businesses in areas which would receive A-CAM II support but for the inaccurate Form 477 data to receive 25/3 Mbps broadband.

The City of Barnesville made an inadvertent error on its Form 477 report and at the time had no idea that the error could ultimately deprive Red River of over \$17 million in critical A-CAM

⁷ *Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90, et al., Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, para. 71.

⁸ *See, Order*, WC Docket No. 10-90, DA 16-842 at para. 37 (rel. July 25, 2016) (“*Challenge Order*”). The Bureau noted that 31 of the challenges filed only a declaration of the challenged provider as supporting evidence and cited examples such a letter filed by Hamilton.net, stating that it does not provide voice service in the state of Nebraska. *Id.*

⁹ *Id.*

¹⁰ *Id.*

support—it was never the City of Barnesville’s intent to disqualify some of Red River’s blocks from A-CAM because *it does not provide broadband service there at all*. When it was informed of the competitive overlap situation, the City of Barnesville quickly revised its December 31, 2017 Form 477 and subsequent filings so that these Form 477 reports no longer indicate that it offers service in Red River’s study area. The municipal ILEC broadband provider then prepared the attached letter in which it urges the Bureau to make appropriate adjustments to Red River’s A-CAM II offer to take into account the revised Form 477 data.

III. Conclusion

Although there is no explicit challenge process in A-CAM II as there was in A-CAM I, that invites unsubsidized competitors to make corrections to their Form 477 and notify the Bureau, the public interest is advanced and Bureau precedent is followed if the Bureau grants this petition and includes in Red River’s A-CAM II offer, Form 477 revisions made by an adjacent ILEC who inadvertently reported FTTH in Red River’s service area that resulted in A-CAM II support being eliminated in certain census blocks. Consistent with the public interest, Red River urges the FCC to recalculate its A-CAM II offer to reflect the reality that the City of Barnesville does *not* provide broadband in any of Red River’s study area, and the City of Barnesville has revised its Form 477 data to factually represent where it currently has service.

Respectfully Submitted,

July 11, 2019

By: /s/ John Kuykendall
John Kuykendall, Vice President
JSI
7852 Walker Dr. Suite 200
Greenbelt, Maryland 20770

Attachment

By: /s/ Jeff Olson
Jeff Olson, General Manager
Red River Rural Telephone Association dba
Red River Communications
510 Broadway
PO Box 136
Abercrombie, ND 58001

Attachment

P.O. Box 550
102 Front St. N.
Barnesville, MN 56514



Phone: 218 354-2292
Fax: 218 354-2472
E-mail: barnesville@bvillemn.net

June 4, 2019

Via ECFS

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

Re: WC Docket Nos. 10-90, DA 19-372
Notice of *Ex Parte*

Dear Ms. Dortch:

The City of Barnesville Municipal Telephone SAC 361353 (the “Company”) has reviewed the competitive overlap data associated with offers of the latest version of the Alternative Connect America Cost Model (“A-CAM II”)¹ and found that the A-CAM II incorrectly shows the Company as providing competitive service in study areas served by an adjacent rate-of-return carrier. Specifically, the Company does not provide broadband service as an unsubsidized competitor in the study area served by the incumbent telephone companies (“ILEC”), Red River Communications (SAC 381631).

This discovery led the Company to revisit its Form 477 filings in which it found that it inadvertently had overreported its fiber-to-the-home broadband data outside of the existing ILEC study area including areas that the Company does not offer its broadband service. The Company has now revised its December 31, 2017 Form 477 and subsequent filings so that these filings no longer indicate that the Company offers service in adjacent ILEC area and urges the Wireline Competition Bureau (“Bureau”) to use this revised data to show that there is no competitive overlap by the Company for this ILEC.

The Company understands that unlike the offers for A-CAM I, there is no “challenge” mechanism for the Bureau to accept revised Form 477 data; however, the Company observes that in the

¹ See, Wireline Competition Bureau Announces Alternative Connect America Cost Model II Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband, Public Notice, WC Docket No. 10-90, DA 19-372 (rel. May 2, 2019) (“Public Notice”).

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“The City of Barnesville Is An Equal Opportunity Provider And Employer”

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Notice of *Ex Parte*
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context of the 2019 Broadband Deployment Report ("Report"), the Bureau made revisions to the report after it had already been submitted to the FCC Chairman due to a discovery that the Report contained overstated broadband deployment data² and believes that a similar process could be used in this case. Similar to what occurred with the Report, the Bureau by virtue of this letter, is now aware that A-CAM II contains overstated broadband deployment data which reduces support in areas served by this ILEC. Accordingly, it is in the public interest for the Bureau to make appropriate adjustments to A-CAM II to take into account the revised Form 477 data submitted by the Company and release revised A-CAM II offers to this ILEC.

Respectfully Submitted,



Guy Swenson, TEC Manager

² See, Revised Draft Broadband Deployment Report Continues to Show America's Digital Divide Narrowing Substantially, FCC New Release (rel, May 1, 2019).