

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

**MILLER TELEPHONE COMPANY
PETITION FOR WAIVER OF A-CAM II ELECTION DEADLINE AND REQUEST FOR
A REVISED A-CAM OFFER**

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ Miller Telephone Company (“Miller” or the “Company”) hereby requests an expedited limited waiver of the July 17, 2019 deadline for rate-of-return companies to notify the FCC of their intent to elect Alternative Connect America Model (“A-CAM”) II support² to allow the Wireline Competition Bureau (“WCB”) sufficient time to consider revising the A-CAM II offer made to Miller in light of the evidence provided herein.³

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).

³ In the event that other Commission rules or decisions require waiver for this petition to be granted, Miller hereby requests waiver of those rules and decisions.

Miller's study area is almost completely ineligible for A-CAM II support, except for six locations, due to an unsubsidized fixed wireless provider erroneously over-reporting its service footprint *and* its speeds on the Form 477. Because of the fixed wireless provider's egregious over-stating of its network abilities, nearly all of Miller's very rural study area could face a double-edged sword of being eliminated from A-CAM II and forcing Miller to compete in a reverse auction for Legacy Universal Service Fund ("USF") support at a future date, depending on how the Legacy reverse auction mechanism is developed. Miller hereby files this petition out of an abundance of caution and respectfully requests that the WCB recalculate its A-CAM II support offer with the fixed wireless provider Total Highspeed LLC removed from consideration as an unsubsidized competitor. Miller requests an extension of the July 17, 2019 deadline for submitting A-CAM II election notices until the WCB can consider the evidence submitted in this petition and recalculate the offer. At that time, Miller can make an informed decision between the A-CAM II and Legacy support mechanisms.

I. Background

Miller serves a very rural area in southeast Missouri. The town of Miller, the largest in the Company's study area, has a population of 699. The entire study area has only 1,377 locations spread across 96 square miles. Currently, all the Company's customers in the study area have access to broadband over 25/3 Mbps. Other than in a very small area located solely in the town of Miller, there are no other competitors in the study area that can provide reliable, quality, and affordable voice and broadband service to all 1,377 locations. Miller was hopeful that the A-CAM II offer would support its deployment of fiber-to-the-home throughout the study area so that the residents and businesses there would be able to fully participate in education, healthcare, commerce, and connectivity on par with urban Americans.

Miller was surprised to see that its A-CAM II offer was only for six locations despite the Company knowing that there is no other competitor that can provide 25/3 Mbps throughout the study area. Upon further research, Miller determined that Total Highspeed was not only reporting service in all census blocks in Miller's study area except a few, but the fixed wireless provider was also reporting speeds of **500 Mbps download and 500 Mbps upload** on its Form 477—a technical impossibility for basic fixed wireless service in a sparsely populated, hilly, and forested terrain like Miller's. If that weren't enough to disqualify Total Highspeed from knocking Miller out of A-CAM II, further research also showed that the fixed wireless provider charges **\$200 per month for 8 Mbps**, significantly higher than the FCC's broadband benchmark rate for similar speeds,⁴ which is \$74.57.⁵ Miller's general manager also conducted a "secret shopping" exercise and called Total Highspeed to request 50 Mbps download speeds outside the town of Miller.⁶ The Total Highspeed sales representative had to look at a map to see where Miller was located and then indicated that the highest speed it could provide was 8 Mbps for \$200, which is consistent with the speed and pricing on the provider's website. Miller has a high poverty rate and the Company is the only provider situated to deploy fiber-to-the-home at rates at or below the national benchmark, provided it can either obtain A-CAM II funding or continue to operate as a Legacy USF recipient without being subject to a costly and misguided reverse auction and the possible negative economic impacts that it would likely yield. If Miller is shut out of A-CAM II and must also compete for Legacy USF in a reverse auction, there is a strong chance that the residents of the Miller study area will either have no access to broadband or the

⁴ As shown in the attachment, the 8 Mbps download tier, called the "Super" tier has a "base speed of 4 Mbps" but indicates that "many customers will receive 8 Mbps." Accordingly, it is possible that the highest speed offered by the fixed wireless provider in Miller may be only 4 Mbps download.

⁵ FCC broadband benchmark calculator <https://www.fcc.gov/reasonable-comparability-benchmark-calculator>

⁶ *See, Attachment* - Declaration from General Manager David Rose.

cost of service will be an enormous burden on low income households (approximately 20 percent of Miller, MO qualifies below the poverty line).

II. Good Cause Exists to Grant Miller's Waiver

Under Section 1.3, generally the Commission may exercise its discretion to waive an FCC rule “for good cause shown.”⁷ Waiver is appropriate where the “particular facts would make strict compliance inconsistent with the public interest.”⁸ 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.⁹

Because there was no opportunity for a robust challenge process for the A-CAM II, there are no other alternatives for seeking relief from Total Highspeed's egregiously flawed Form 477 data that disqualifies Miller from A-CAM II support for all but six locations, besides filing a waiver at this late juncture. Granting this petition is in the public interest because it will allow the WCB to present a factually accurate A-CAM II offer to Miller, and it will give Miller the opportunity to evaluate a fair offer based on the amount of support that the Company needs to deploy 25/3 Mbps broadband to all its rural customers. Furthermore, granting this petition is in the public interest because it will potentially give approximately 878 locations an opportunity to receive broadband via the efficient and targeted A-CAM II model.¹⁰ At this point, it is even uncertain if Miller would be able to continue receiving Legacy USF unless the FCC drastically curtails the ability of unsubsidized competitors to grossly over-report their coverage and speeds

⁷ 47 C.F.R. § 1.3.

⁸ 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*”).

⁹ 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).

¹⁰ Accounting for locations below the \$52.50 benchmark, Miller calculated that its A-CAM II offer should support 878 locations if the Form 477 data submitted by this fixed wireless provider was not considered.

on the Form 477. In the absence of certainty that Total Highspeed's overstated service will not force Miller into a reverse auction for funds in its own study area, the Company at the very least wants a fair and accurate A-CAM II offer to consider.

The FCC has good cause and precedent to grant Miller's petition expeditiously, because it has in fact granted an A-CAM I challenge that was specifically directed at Total Highspeed in 2016. The FCC removed the fixed wireless provider from being considered an unsubsidized competitor to a rate-of-return carrier when the Commission was presented with the same type of evidence that Miller is presenting in this petition.¹¹ In the *Challenge Order*, the Bureau stated, "Information from a provider's website regarding types of service provided, speed or price of service was persuasive when it is clear on its face that voice or broadband services are not provided or that these services do not meet our service obligation standards."¹² The Bureau then cited a challenge filed by Choctaw Telephone against Total Highspeed and ruled that it would grant the challenge based upon a screenshot from Total Highspeed's website "clearly show[ing] that Total Highspeed does not provide broadband meeting the [FCC's] price requirement."¹³ Total Highspeed does not provide broadband that meets the speed service obligation standard, and the price for its higher speeds are exorbitant and over twice the national benchmark. Furthermore, accepting a 500/500 Mbps speed offering by a fixed wireless provider as reported on its Form 477 is capricious and will cause more harm to the residents and businesses in the Miller study area than any possible administrative benefit that the Commission could have by refusing to grant this petition.

¹¹ See, *Order*, WC Docket No. 10-90, DA 16-842 at para. 41 (rel. July 25, 2016) ("*Challenge Order*").

¹² *Id.* (emphasis supplied).

¹³ *Id.*

III. Conclusion

It is unacceptable to Miller that the Company is essentially shut out of a fair and accurate A-CAM II offer because a “competitor” egregiously overstated its speed and service footprint on the Form 477. Miller is aware that the Commission is moving ahead with plans to revamp the Form 477 data collection to make it more granular, but at the present, Miller requests an opportunity to be presented with an A-CAM offer that relies on facts not falsehoods. Even with no opportunity for a challenge process with A-CAM II, Miller believes that the FCC would still be following precedent by finding that the broadband service provided by Total Highspeed does not meet the price obligation standards for broadband, at the very least. Therefore, Miller respectfully asks for the FCC to immediately remove the provider from being considered an unsubsidized competitor for A-CAM II and issue a revised A-CAM II offer to Miller. Additionally, Miller seeks waiver of the July 17, 2019 deadline to submit its A-CAM decision until after it has had an opportunity to evaluate its revised offer with Total Highspeed removed.

Respectfully Submitted,

July 11, 2019

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By: /s/ John Ludenia
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Attachment

ATTACHMENT

Declaration of Miller Telephone Company

I, David Rose, General Manager of Miller Telephone Company (“Miller” or the “Company”) affirm, under penalty of perjury that the representation of the Company in the foregoing Emergency Request for Expedited Treatment – Petition of Waiver filed (“Petition”) and the additional company-specific information provided herein in support of the petition is true to the best of my knowledge, information and belief.

As explained in the Petition, pursuant to Section 1.3 of the rules of the FCC, the Company requests an expedited waiver of the July 17, 2019 deadline for rate-of-return companies to notify the FCC of their intent to elect Alternative Connect America Model (“A-CAM”) II support for targeted funding to deploy broadband in unserved rural areas. Specifically, the Company requests that the Wireline Competition Bureau (“WCB”) recalculate its A-CAM II support offer with the fixed wireless provider Total Highspeed LLC removed from consideration as an unsubsidized competitor. Miller requests an extension of the July 17, 2019 deadline for submitting A-CAM II election notices until the WCB can recalculate the offer. The following provides additional company-specific information in support of the Petition.

Miller serves a very rural area in southeast Missouri. The entire study area has only 1,377 locations spread across 96 square miles. The town of Miller, the study area’s largest town, only has a population of 699. Currently, all the Company’s customers in the study area have access to broadband over 25/3 Mbps. Other than in a very small area located solely in the town of Miller, there are no other competitors in the study area that can provide reliable, quality, and affordable voice and broadband service to all 1,377 locations. Therefore, Miller was hopeful that the A-CAM II offer would support its deployment of fiber-to-the-home throughout the study area so that the residents and businesses would be able to access education, healthcare, commerce, and connectivity on par with urban Americans.

Miller was shocked to see that it’s A-CAM II offer was only for six locations despite the Company knowing that there is no other competitor that can provide 25/3 Mbps throughout the study area. Upon receiving its A-CAM II offer, Miller immediately began researching further into the issue. Miller determined that Total Highspeed, an unsubsidized fixed wireless provider, was reporting service in all census blocks in Miller’s study area, except for a few, and also reporting speeds of 500 Mbps download and 500 Mbps upload on its Form 477 – a technical impossibility for basic fixed wireless service in a sparsely populated, hilly, and forested terrain like Miller’s. Furthermore, Total Highspeed charges \$200 per month for 8 Mbps, a significantly higher rate than \$74.57 which is the FCC’s broadband benchmark rate for similar speeds. Finally, Miller’s general manager conducted a “secret shopping” exercising and called Total Highspeed to request 50 Mbps download speeds outside the town of Miller. The Total Highspeed sales representative had to look at a map to see where Miller was located and then indicated that the highest speed it could provide was 8 Mbps for \$200, consistent with the speed and pricing on the provider’s website.

Due to Total Highspeed erroneously over-reporting its service footprint and speeds on the Form 477, Miller's study area is now almost completely ineligible for A-CAM II support except for six locations. The town of Miller has a high poverty rate, with approximately 20% of the town falling below the poverty line. The Company is the only provider positioned to deploy fiber-to-the-home at rates at or below the national benchmark, provided it can either obtain A-CAM II funding or continue to operate as a Legacy USF recipient without being subject to a costly and misguided reverse auction. If Miller is shut out of A-CAM II and must also compete for Legacy USF in a reverse auction, there is a strong possibility that the residents of the Miller study area, approximately 878 locations, will either have no access to broadband or the cost of service will be an enormous burden on low income households.

Since there was no robust challenge process for the A-CAM II, the Company has no other alternatives for seeking relief from Total Highspeed's egregiously flawed Form 477 data, that disqualifies the Company from A-CAM support for all but six locations, besides filing a waiver at this late juncture. The Company requests an opportunity to be presented with a proper A-CAM II offer of support and urges the Commission to expeditiously grant the Company's Petition and extend its July 17, 2019 deadline to submit its A-CAM decision until after it has had an opportunity to evaluate its revised offer with Total Highspeed removed.

Miller Telephone Company

/s/ David Rose

**By: David Rose, General Manager
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