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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58

EMERGENCY REQUEST FOR EXPEDITED TREATMENT

PETITION OF CLARITY TELECOM LLC DBA VAST BROADBAND FOR WAIVER OF DEADLINE TO SUBMIT FORM 477 REVISIONS

Pursuant to Section 1.3 of the rules of the Federal Communications Commission ("FCC" or "Commission"),[1] Clarity Telecom LLC dba Vast Broadband ("Clarity" or the "Company") hereby requests waiver of the timeframe by which rate-of-return incumbent local exchange carriers ("RoR ILECs") were to submit revisions to their June 2015 FCC Form 477 data in order for the revisions to be incorporated in the Alternative Connect America Model ("A-CAM") ("March 30 Timeframe").[2] As explained herein, special circumstances warrant a deviation from

[1] 47 C.F.R. § 1.3.

[2] *See Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, FCC 16-33 ¶ 56 (rel. March 30, 2016) ("*Rate-of-Return Reform Order*").

this timeframe for A-CAM v2.3 that was offered to RoR ILECs on August 3, 2016[3] due to an inadvertent clerical error when Clarity revised its June 2015 Form 477 data. This error consisted solely of an incorrect insertion of the cable modem technology code (code 42) rather than the DSL technology code (code 10) in certain census blocks which did not become apparent until after the A-CAM v2.3 was released. On September 1, 2016, the Company revised its June 2015 Form 477 data to correct this inadvertent error and seeks waiver of the March 30 Timeframe to allow the revised corrected Form 477 data to replace the incorrect data in A-CAM v2.3. Inclusion of Clarity's corrected data in this version of the A-CAM will ensure that the most accurate information about broadband deployment in Clarity's study area is used to base critical funding decisions for the next decade and enable Clarity to fulfill its commitments to the rural residents in its service area and satisfy its ETC obligations.

I. Background

Clarity has both ILEC and CLEC operations. The Company's ILEC operations are extremely rural in nature spanning over 980 square miles and including nine exchanges over four counties in the southeastern corner of South Dakota. Three of the exchanges, Flyger, Hurley and Parker in Turner County, have a population density of only fourteen people per square mile. The unserved and underserved locations are typically in parts of the study area that have 2.5 or fewer homes per square mile. By its own calculations, Clarity still needs to extend 10/1 Mbps or greater broadband to approximately 90 percent of its study area, or approximately 870 square miles and 3,900 locations.

[3] *See Wireline Competition Bureau Announces Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90 (rel. August 3, 2016), DA 16-869, ("*A-CAM Offer Public Notice*").

II. Clarity's Form 477 Error and Revision

Clarity timely filed its June 2015 Form 477 data on September 1, 2015. However, in preparation for its March 1, 2016 filing, Clarity discovered that it had not reported all of the census blocks where the Company offers broadband.[4] On February 29, 2016, Clarity revised its June 2015 Form 477 data to include, for both the ILEC and CLEC, the additional census blocks which the Company had omitted in its initial filing ("February 2016 Revision"). Due to due to an inadvertent error, however, the revised filing incorrectly identified the technology as cable modem (code 42) in certain of the newly added census blocks rather than DSL (code 10). This inadvertent error did not become apparent until after the release of A-CAM v.2.3 when the revised June 2015 Form 477 data "knocked out" support due to the inclusion of the census blocks which had been erroneously indicated as offering cable modem service. On September 1, 2016 Clarity filed a second revision correcting the data to reflect the accurate DSL technology code in the appropriate census blocks[5] ("September 2016 Correction"). In this petition, Clarity demonstrates that under these special circumstances, "good cause" exists and the public interest would be advanced by deviating from the March 30 Timeframe to allow the September 2016 Correction to replace the incorrect data in A-CAM v2.3.

[4] When Clarity filed the June 2015 deployment data, the Company had owned the ILEC and CLEC operations for less than ten months and had not fully familiarized itself with the broadband facilities on a census block by census block basis. Instead, the Company relied primarily on geocoded broadband subscription data to determine the census blocks where it knew broadband facilities existed. In preparation for the March 1, 2016 Form 477 filing, the Company launched an extensive investigation to determine on a block-by-block basis where its broadband facilities are located. The results of this investigation was then used to make the revised filing on February 29, 2016.

[5] *See* Attachment 1, showing the September 2016 Correction.

III. Good Cause Exists to Grant Clarity's Waiver

Waiver of a Commission rule is warranted if "good cause" is shown.[6] The Commission "may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest," or alternatively, where "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."[7] As shown herein, this situation constitutes a special circumstance that warrants a deviation from the March 30 Timeframe. Indeed, the public interest would be advanced by inclusion of Clarity's September 2016 Correction in the A-CAM.

Clarity faces daunting challenges in providing advanced communications services to its extremely rural subscribers, and these challenges are exacerbated by extreme winter weather conditions and the very long loops needed to reach customers. The Company often finds itself dealing with nearly unworkable situations for new construction and network repairs. Despite these environmental hardships, Clarity's commitment to providing the most advanced telecommunications and broadband services to its rural consumers remains steadfast.

This commitment was reinforced in recent assertions made to the South Dakota Public Utilities Commission ("SD PUC") in the state commission's annual ETC certification process. In testimony and written responses to data requests, Clarity conveyed its commitment to put universal service fund dollars into its network by its intent to elect A-CAM support, pending last minute changes from the FCC. In the state commission proceeding, the Company cited the calculations made in A-CAM v.2.2 (which was the latest version available at that time) and

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[6] *See* 47 C.F.R. § 1.3 (Waiver of a Commission rule is warranted "if good cause therefor is shown."). *See also Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*"); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) ("*WAIT Radio*").

[7] *Northeast Cellular*, 897 F.2d at 1166 (citation omitted), 1164; *see also WAIT Radio*, 418 F.2d at 1159. The Commission has applied this waiver standard in the context of Section 51.917(b).

informed the SD PUC that if the final version of the A-CAM were similar to v.2.2, the Company would be obligated to deploy broadband to a total of 3,956 locations in the Company's ILEC territory and would have sufficient funding to fulfill that obligation. Clarity explained that all of those locations are in census blocks currently not served by Clarity's cable or fiber plant and are in areas considered high-cost or extremely high-cost that have no competitive overlap. The Company also informed the state commission that of those locations, Clarity would be required to provide speeds of at least 10 Mbps downstream/1 Mbps upstream ("10/1") to 1,777 locations; 25 Mbps downstream/3 Mbps upstream ("25/3") to 1,776 locations and 4 Mbps downstream/1 Mbps upstream ("4/1") for 100 locations with obligations to serve the remaining 303 locations upon reasonable request.[8] In its ETC designation hearing, the State Commissioners expressed enthusiasm for Clarity's decision but focused primarily on the 403 "capped" locations so Clarity provided additional assurances that those locations would receive broadband.

However, due to the inclusion of the incorrect February 2016 Revision in A-CAM v.2.3, these numbers have been significantly reduced. Instead of 3,956 eligible locations, the number of locations to which the Company would have buildout obligations drops to 1,820. The number of locations to which Clarity would be obligated to provide speeds of at least 10/1 drops from 1,777 to 808 locations. Similarly, the number of locations to which Clarity would be obligated to provide speeds of at least 25/3 drops from 1,776 locations to 807. The 403 "capped" locations which are of special concern to the State Commissioners drops almost in half to 205 with 51 at 4/1 and the remaining 154 locations upon reasonable request.

In the second revision made on September 2016 Correction, almost all of the census blocks in the ILEC service area which were added in the February 2016 Revision were correctly

[8] Funding for the 4/1 locations and remaining locations is "capped."

coded as DSL. Accordingly, grant of this waiver would be in the public interest in that it would allow the inclusion of the September 2016 Correction in the A-CAM which would bring the eligible number of locations back to a level similar to A-CAM v.2.2. This would allow Clarity to fulfill its commitment to the rural residents that it serves and to fulfill its ETC obligations as set forth by the SD PUC.

Based on the A-CAM calculations in v.2.2, Clarity was able to demonstrate to the SD PUC that by electing A-CAM support, the Company should have sufficient funds to deploy broadband to locations that currently lack 10/1 broadband, including the most remote areas within its service territory. Deploying broadband to these rural and remote areas has been a stated concern for the state commission for quite some time. Grant of this waiver will allow A-CAM support to be distributed based upon accurate Form 477 data which in turn will allow individuals in rural and remote areas in South Dakota to receive scalable high-speed broadband as envisioned by the FCC for those carriers electing A-CAM. Grant of this waiver also will allow Clarity to fulfill its commitment to individuals within even the most remote areas within its ILEC service area to provide high-speed broadband and fulfill its commitment to the SD PUC in order to meet the Company's ETC obligations.

Clarity also emphasizes that it is in the Commission's best interest, and in the public interest, to rely on the most accurate information available as a matter of good policy. Clarity was not aware that its Form 477 data had an error until after the release of A-CAM v.2.3. When Clarity discovered in August that the result of the decrease in locations and funding was due to the inadvertent error, it immediately took steps to revise its Form 477 data and file this instant petition.

IV. Conclusion

Due to the special circumstances presented herein, the Commission should deviate from the March 30 Timeframe to allow for inclusion of Clarity's September 2016 Correction to be included in A-CAM v.2.3. Clarity urges the Commission to expeditiously grant this waiver prior to the November 1 deadline to submit A-CAM election notices so that the Company has ample time to review its A-CAM v2.3 results based on accurate broadband deployment data in its study area.

Respectfully submitted,

/s/ James M. Gleason

James M. Gleason, CEO
Clarity Telecom, LLC dba Vast Broadband

Filed September 8, 2016

Attachment

ATTACHMENT 1

Federal Communications Commission

(RETAIN FOR YOUR RECORDS)

Form 477 Filing Summary

FRN: **0023758238** | Data as of: **Jun 30, 2015** | Operations: **Non-ILEC** | Submission Status: **Revised - Submitted** | Last Updated: **Sep 1, 2016 12:51:34**

Filer Identification

Section	Question	Response
Filer Information	Provider Name	Clarity Telecom, LLC DBA Vast Broadband
	Holding Company Name	Clarity Telecom, LLC
	SAC ID	399006
	499 ID	830477
Data Contact Information	Data Contact Name	Kristin Burton
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Data Submitted

Form Section	File Name	Date & Time	Number of Rows
Fixed Broadband Deployment	Clarity BB Deployment Files - v.2.csv	Sep 1, 2016 12:47:59	9138
Fixed Broadband Subscription	Clarity CLEC BB Subscriber File Updated.csv	Sep 1, 2016 12:46:42	371
Fixed Voice Subscription	Clarity CLEC - Voice Subscriber File.csv	Sep 1, 2016 12:46:42	245

Fixed Broadband Deployment

Census Block Counts by State, DBA Name and Technology

State	DBA Name	Technology	Blocks
Iowa	Vast Broadband	Cable Modem – DOCSIS 3.0	304
Minnesota	Vast Broadband	Cable Modem – DOCSIS 3.0	1994
South Dakota	Vast Broadband	Asymmetric xDSL	1064
		Cable Modem – DOCSIS 3.0	5776
Total			**9138**