

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
Allamakee-Clayton Electric Cooperative)	
Petition for Waiver of RBE Build-out)	WC Docket No. 10-90
Requirements)	WC Docket No. 14-58

Petition of Allamakee-Clayton Electric Cooperative for Waiver of RBE Build-out Requirement

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ Allamakee-Clayton Electric Cooperative (“ACEC”), SACs (356220; 356221; 356222; 356223) seeks a waiver of the Rural Broadband Experiment’s (“RBE’s) “Build-out Requirement” as specified in paragraph 74, the “Trigger for Performance Default” as specified in paragraph 90, and the “Support Reductions and Recovery of Support” as specified in paragraph 92 of the Commission’s Report and Order and Further Notice of Proposed Rulemaking, released July 14, 2014 (the “*RBE Order*”).² According to the requirements specified in the *RBE Order*, RBE Recipients have the following Build-out requirements:

The recipients will be required to meet interim build-out requirements and by the end of the third year, the recipients must offer service meeting the public service obligations to at least 85 percent of the number of required locations and submit the required certifications and evidence. By the end of the fifth year, the recipients must

¹ 47 C.F.R. § 1.3

² See *In the Matter of Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, Report and Order and Further Notice of Proposed Rulemaking, Released July 14, 2014 (the “*RBE Order*”).

offer service meeting the public service obligations adopted for the relevant experiment category to 100 percent of the number of required locations and submit the required certifications and evidence.³

Paragraph 90 of the *RBE Order* sets forth the Trigger for Performance Default as follows:

Trigger for Performance Default. A performance default will occur if the winning bidder begins receiving support and then fails to meet the terms and conditions of the rural broadband experiments.⁴ For example, if the winning bidder has failed to meet the build-out obligations or does not offer service to the required number of locations.

Paragraph 92 of the *RBE Order* sets forth the Support Reductions and Recovery of

Support as follows:

Support Reductions and Recovery of Support. If a recipient begins receiving support, and the Bureau subsequently determines that it fails to meet the terms and conditions of its experiment, the Bureau will issue a letter evidencing the default, and USAC will begin withholding support.⁵ For the first six months that the entity is not in compliance, USAC will withhold five percent of the entity's total monthly support. For the next six months that the entity is not in compliance, USAC will withhold 25 percent of the entity's total monthly support.

According to the *RBE Order*,⁶ in the event a recipient is unable to meet the terms and conditions of the rural broadband experiments due to circumstances beyond its control, that entity may petition for a waiver of the relevant terms and conditions prior to the relevant build-out milestone pursuant to section 1.3 of the Commission's rules.⁷

³ *Id.*, para 74.

⁴ *Id.*, para. 90

⁵ *Id.*, para. 92

⁶ *Id.*, para. 95.

⁷ Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if

I Background

On August 7, 2015, the Wireline Competition Bureau released a Public Notice which authorized rural broadband experiment support for ACEC (the “*ACEC Award PN*”).⁸

Specifically, in the *ACEC Award PN*, it identified the flowing information relative to ACEC:

State	Project ID	Selected Bid Amount	CBs Covered by Bid	# Locations	SAC
IA	1	\$71,782	12	38	356220
IA	2	\$136,835	20	63	356221
IA	3	\$76,269	11	41	356222
IA	4	\$1,168,707	166	<u>523</u>	356223
Total Locations				665	

After reporting data into the Universal Service Administrative Company’s High Cost Universal Broadband database (the “HUBB”), further inventory of each study area and study area code (“SAC”) indicated that the number of locations identified in the *ACEC Award PN* were overstated.⁹ The actual number of locations found by ACEC in each SAC are as follows:

both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

⁸ See *Rural Broadband Experiment Support Authorized for Ten Winning Bids for Skybeam, LLC, Consolidated Communications Networks, Inc., Delta Communications LLC, and Allamakee-Clayton Electric Cooperative, Inc.* WC Docket No. 10-90, WC Docket No. 14-259. Public Notice Released August 7, 2015.

⁹ See *Wireline Competition Bureau Seeks Comment on Procedures to Identify and Resolve Location Discrepancies in Eligible Census Blocks with Winning Bid Areas*, WC Docket No. 10-90, Released September 10, 2018, (the “*Locations PN*”), para 5. The Commission has acknowledged that the reliability and accuracy of funded location counts were limited by potential inaccuracies in the CAM data inputs, such as study area boundaries and business location sources. The Commission also recognized that in particular cases, “the number of locations assigned to a particular price cap carrier in a given state according to the model simply does not necessarily reflect the actual number of locations.”

State	Project ID	Selected Bid Amount	CBs Covered by Bid	Actual # Locations	Current # Served	SAC
IA	1	\$71,782	12	28	27	356220
IA	2	\$136,835	20	48	48	356221
IA	3	\$76,269	11	31	28	356222
IA	4	\$1,168,707	166	<u>403</u>	<u>384</u>	356223
Total Locations				510	487	

ACEC submits the following description in narrative form of the methodology used to identify structures within their eligible areas that distinguishes actual locations from other kinds of structures:¹⁰

ACEC used the following data sources to confirm the number of actual locations in their study areas:

- 1) Aerial photography provided by the county government
- 2) 2010 census information
- 3) County assessor data
- 4) Electric Cooperative address database

ACEC used GIS mapping to identify three layers of mapping (12 files of each census block located within SAC 356220):

- 1) Aerial photos (from 2016)
- 2) Eligible census blocks
- 3) County parcel data within each census block

ACEC personnel reviewed the 2010 Census data as an indicator of the number of households in each census block. This information was used as the initial reference point to determine the number of potential households. ACEC personnel reviewed aerial photographs taken of the eligible census blocks that were provided by Fayette County (the county where ACEC is located). Since the photographs were taken in 2016, ACEC personnel verified that no

¹⁰ See *Locations PN*, para 10.

additional sites had been constructed since the 2016 aerial photos were taken by reviewing each parcel located within each eligible census block on the county assessor website. The county assessor's office report on each parcel shows all buildings within the parcel along with the value of each building. This data also was used as the indicator of any structures that were torn down or in ill repair and thus not a viable, potential location. ACEC personnel also reviewed the Rural Electric Cooperative electric address locations. If electric service was provided at a location, ACEC personnel verified it was counted as a location. ACEC personnel were able to search by each parcel ID within a specified census block to determine the numbers and types of structures and their specified use (residential, small business, agriculture, abandon) that are located within each specified parcel. ACEC has attached 12 examples, each includes an aerial photo of each parcel within each census block included as part of project #1, SAC 356220. These examples also identify structures/locations and county assessor information regarding those structures. ACEC has also included detail and summary information by SAC that identifies each location by geocode. Due to the sensitive nature of the data, there are public and confidential versions being filed.

II. Grant of the Requested Waiver is in the Public Interest

ACEC's specific circumstance is as the Commission recognized in the *Locations PN*, a particular case in which the number of locations assigned to a particular carrier in a given state according to the model simply does not necessarily reflect the actual number of locations.¹¹ ACEC is therefore unable to build to the number of funded locations as indicated in the *ACEC PN*. As discussed in the *Locations PN*, the Commission has previous stressed that a CAM location is a residential housing unit or small business and cannot be abandoned, derelict,

¹¹ See *Locations PN*, para 5.

condemned, or otherwise uninhabitable.¹² Based on ACEC's review of the specified parcels located within the awarded census blocks, ACEC has reason to conclude some locations as identified and counted in the *ACEC PN* were in fact not residential housing units or small business locations but rather non-residential structures such as barns, livestock buildings, machine storage structures, and grain operations where there would be no need for broadband facilities.

In the *Locations PN*, the Bureau references the *Phase II Auction Reconsideration Order* whereby the Commission required participants not only submit location data but also to provide evidence demonstrating that they could not find any additional actual locations in their eligible areas with the state.¹³ The Commission expressed concern that participants would otherwise report only "cherry pick[ed] locations, i.e. the easiest and least expensive to serve, and omit all other locations."¹⁴ Given that ACEC is using fixed wireless technology, ACEC benefits not by cherry picking certain locations but rather by serving all locations within the signal of its deployed wireless antennas. To the best of its knowledge, ACEC will be able to deploy fiber/fixed wireless facilities capable of reaching the actual number of residential and small business locations within each awarded census block. ACEC submits that a waiver from the Commission's rules is appropriate given these special circumstances warrant a deviation from the general rule.

ACEC submits that deviation from the rule (paragraphs 74; 90; and 92 of the *RBE Order*) will serve the public interest. ACEC has built-out its facilities through-out each SAC and

¹² See *Locations PN*, para 7.

¹³ *Id.*, para 9.

¹⁴ *Id.*

currently reaches 487 of the 510 actual locations all of the SACs. ACEC has deployed fiber/fixed wireless technology in an effort to provide 100% coverage within each of the census blocks included in the RBE award and intends to serve all 510 actual locations.

ACEC requests that the Commission consider a process similar to the one adopted in the *CAF Phase II Auction Order on Reconsideration* (the “*CAF II Auction Order*”)¹⁵ and being considered in the Public Notice released on September 10, 2018 (the “*Locations PN*”).¹⁶ In the *CAF II Auction Order*, the Commission clarified that they would permit Phase II auction recipients to bring to the Commission’s attention disparities between the number of locations estimated by the CAM and the number of locations actually on the ground in the eligible census blocks within their winning bid areas of the state.¹⁷ In the *Locations PN*, the Wireline Competition Bureau seeks comment on approaches to identify and resolve apparent discrepancies between the number of model-determined funded locations that Phase II auction support recipients are expected to serve (funded locations) and the actual number of locations that support recipients can serve (actual locations).¹⁸ In the *CAF II Auction Order*, the Commission found that “If a support recipient can sufficiently demonstrate that it is unable to identify enough actual locations on the ground across all the eligible census blocks to meet its

¹⁵ See *in the Matter of the 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, *Connect America Fund Phase II Auction*, AU Docket No. 17-182, Order on Reconsideration, Released January 31, 2018.

¹⁶ See *Wireline Competition Bureau Seeks Comment on Procedures to Identify and Resolve Location Discrepancies in Eligible Census Blocks with Winning Bid Areas*, WC Docket No. 10-90, Released September 10, 2018, (the “*Locations PN*”).

¹⁷ See the *CAF II Auction Order*, para. 23.

¹⁸ See *Locations PN*, para. 1.

total state requirements, its obligation will be reduced to the total number of locations it was able to meet its state requirement, its obligation will be reduced to the total number of locations it was able to identify in the state and its support will also be reduced on a pro rata basis.”¹⁹ Further, the Commission found that “a recipient that cannot identify enough actual locations must submit evidence of the total number of locations in the eligible areas in the state, including geolocation data (indicating the latitude/longitude and address of each location), in a format to be specified by the Bureau, for all the locations it could identify.”²⁰ ACEC has included this data for Commission review (Identified by SAC as referenced on page five of this petition). This information is also available via the High Cost Universal broadband reporting system-HUBB (<https://www.usac.org/hc/tools/hubb.aspx>). In addition, as previously discussed, ACEC has submitted a description in narrative form of the methodologies used to identify structures within their eligible areas.²¹

ACEC believes it has demonstrated good cause to waive the rules as cited above and requests the Commission to waive such rules.

Respectfully Submitted,

Allamakee-Clayton Electric Cooperative

/s/ Paul Foxwell

By: Paul Foxwell

Executive Vice President and General Manager

September 26, 2018

¹⁹ See *CAF Phase II Auction Order*, para. 23.

²⁰ *Id.*

²¹ See *Locations PN*, para 10.