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December 17, 2014

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

**Re: Michael D. Donnell dba San Joaquin Broadband  
FRN 0024049629  
Rural Broadband Experiment Application  
WC Docket No. 10-90  
REQUEST FOR CONFIDENTIAL TREATMENT PURSUANT  
TO SECTION 0.459 OF THE COMMISSION'S RULES AND  
REQUEST FOR WAIVER**

Dear Ms. Dortch:

On behalf of Michael D. Donnell dba San Joaquin Broadband, attached hereto is Mr. Donnell's Request for Waiver ("Waiver Request") of certain financial qualification requirements described in the Commission's *Report and Order* implementing the Rural Broadband Experiment program.<sup>1</sup> The Waiver Request is submitted in accordance with the procedures explained in the Commission's *Public Notice* provisionally selecting Mr. Donnell's application for rural broadband experiment funding to provide fixed broadband services to 2,585 census blocks in California.<sup>2</sup> The Waiver Request with the referenced exhibits also is being submitted electronically as an attachment to Mr. Donnell's Form 5620, which undersigned counsel and Mr. Donnell understand will be confidential.

The exhibits to the Waiver Request contain sensitive financial and proprietary business information that should be protected from public disclosure. Pursuant to Section 0.459 of the Commission's Rules, Mr. Donnell hereby requests confidential treatment of the exhibits to the Waiver Request (the "Information"). This Information includes Mr. Donnell's business plan and

<sup>1</sup> See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014) ("*Report and Order*").

<sup>2</sup> See *Public Notice*, DA 14-1772 (rel. Dec. 5, 2014) ("*Public Notice*").



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financial projections, and also a letter of intent from a bank concerning the commitment of funds to Mr. Donnell's project. Such information is necessary for the Commission – but not the public – to review given that the Commission has proposed to make \$14.8 million dollars available to Mr. Donnell and wants to ensure that he is financially qualified.

As required by Section 0.459(b), Mr. Donnell provides the following information:

1. *Identification of the specific information for which confidential treatment is sought.* Mr. Donnell requests that the exhibits to the Waiver Request be treated as confidential pursuant to Exemption 4 of FOIA<sup>3</sup> and Section 0.459, which protect confidential commercial and other information not routinely available for public inspection. The Information includes a business plan, financial projections and a letter of intent from a banking institution. This is competitively sensitive, business confidential and proprietary commercial information that would not routinely be made available to the public and has been carefully guarded from Mr. Donnell's competitors. If the Information were disclosed, other parties could use it to determine information relative to Mr. Donnell's business plans, competitive operations, operations and performance.

2. *Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.* The Information for which confidentiality is requested concerns the rural broadband experiment proceeding, the requirements for which were adopted in the *Report and Order*. The *Public Notice* specifically contemplates that documents used to support a waiver request may be subject to confidential treatment.

3. *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.* The Information contains a business plan and detailed financial projections concerning the proposed operations of Mr. Donnell's broadband network. It is competitively sensitive, business confidential and proprietary commercial information that would not routinely be made available to the public and has been carefully guarded from other parties.

4. *Explanation of the degree to which the information concerns a service that is subject to competition.* The Information includes information about the areas where Mr. Donnell plans to deploy service, pricing tiers, costs and customer projections. If the Information is not protected, competitors and would-be competitors could be able to use the Information to their competitive advantage.

5. *Explanation of how disclosure of the information could result in substantial competitive harm.* Because the Information generally would not be subject to public inspection and would customarily be guarded from competitors, the Commission's rules acknowledge that release of the Information to the public is likely to produce competitive harm. Mr. Donnell's

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<sup>3</sup> See 5 U.S.C. § 552(b)(4).



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competitors could assess aspects of his operations and determine the location of his planned towers and customers to undermine Mr. Donnell's deployment objectives and competitive position.

6. *Identification of any measures taken by the submitting party to prevent unauthorized disclosure.* Mr. Donnell's maintains strict security concerning his plans and financial information. Only Mr. Donnell and persons directly authorized by him have access to the data required to produce the Information.

7. *Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.* The information is not available to the public and has not previously been disclosed to third parties.

8. *Justification of the period during which the submitting party asserts that material should not be available for public disclosure.* Mr. Donnell requests that the Information be treated as confidential indefinitely because it is not possible at this time to determine any date certain by which the Information could be disclosed without risk of competitive harm to Mr. Donnell.

9. *Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.* If publicly disclosed, the Information would be extremely harmful to Mr. Donnell's plans to deploy fixed broadband service using funds made available by the Commission.

Please contact undersigned counsel to Mr. Donnell if there are any questions concerning this matter.

Respectfully submitted,

Stephen E. Coran

Enclosures

**Michael D. Donnell dba San Joaquin Broadband  
Rural Broadband Experiment Application  
Request for Waiver of Financial Requirements**

Michael D. Donnell dba San Joaquin Broadband hereby seeks waiver of the requirement that winning bidders for rural broadband experiment funds provide audited financial statements for the past three years. In lieu of audited financial statements, Mr. Donnell demonstrates his financial qualifications through other documentation described below and in the exhibits hereto. Of significant importance, Mr. Donnell has secured a letter of intent from a top 100 bank to provide a letter of credit as a precursor to the issuance of the irrevocable letter of credit (“LOC”) commitment required by the *Report and Order*.<sup>1</sup> Accordingly, the Commission should find that Mr. Donnell is financially qualified.

***Background***

By *Public Notice* dated December 5, 2014, the Wireless Competition Bureau (“Bureau”) provisionally selected Mr. Donnell’s application for Category One rural broadband experiment funding.<sup>2</sup> Subject to submission of additional information and a final determination of Mr. Donnell’s technical and financial qualifications, Mr. Donnell will receive \$14,833,187 to fund construction and operation of fixed voice and broadband services in 2,585 census blocks in California.

Mr. Donnell is a seasoned and experienced wireless industry executive. As described in his attached resume,<sup>3</sup> Mr. Donnell has served as Chief Executive Officer of public and private companies and has led multiple organizations to industry record growth and operating performance levels. Among other achievements, Mr. Donnell served as the Western Region President of PageNet and President and CEO of Cellular One where he recruited management teams to design and deploy networks, hire, train and develop sales, customer service, accounting, technical operations and administration. He is actively recruiting from his network of wireless industry veterans to staff San Joaquin Broadband. More recently, Mr. Donnell has been President of a number of software development, information technology and VoIP companies.

Going forward, Mr. Donnell plans to conduct rural broadband experiment operations through a limited liability company and to bring in other investors. These efforts are under way.

***Financial Qualifications***

In the *Report and Order* adopting requirements for the rural broadband experiment program, the Commission stated that winning bidders must “provide the most recent three

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<sup>1</sup> *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014) (“*Report and Order*”). A copy of the letter of intent is attached hereto as Exhibit 1.

<sup>2</sup> See *Public Notice*, DA 14-1772 (rel. Dec. 5, 2014) (“*Public Notice*”).

<sup>3</sup> Mr. Donnell’s resume is attached hereto as Exhibit 2.

consecutive years of audited financial statements, including balance sheets, net income, and cash flow....”<sup>4</sup> In FAQs posted on the Commission’s web site, the Bureau stated that:

[i]f a winning bidder is unable to produce three consecutive years of financial statements, it should file a waiver of this requirement after it has been named as a winning bidder. An entity should submit with its waiver petition evidence that demonstrates it is financially qualified. We then determine on a case-by-case basis whether it can assess the entity’s financial qualifications using the alternative evidence provided.<sup>5</sup>

As an individual, Mr. Donnell does not have audited financial statements for the past three years. Accordingly, he is providing alternative evidence to demonstrate that he is financially qualified.

First, as discussed above and as shown on Exhibit 2, Mr. Donnell is an experienced wireless industry executive with a track record of success in building and operating wireless networks. The Commission should consider these achievements as evidence that Mr. Donnell, and any successor entity that he will lead, will be financially responsible and will meet the program requirements.

Second, Mr. Donnell has developed a Business Plan for the build-out and operation of the network to be funded through the rural broadband experiment program.<sup>6</sup> The Business Plan includes information concerning anticipated expenses (construction, marketing, etc.) and revenues, as well as a summary of the network plan. The Business Plan also includes pricing information for broadband and voice services. The Business Plan demonstrates Mr. Donnell’s thoughtful planning for coverage, service and adoption of the proposed fixed broadband services.

Third, Mr. Donnell has prepared detailed financial projections for the next ten years.<sup>7</sup> This information is based on reasonable financial projections and shows that, with the rural broadband experiment support, the funded operations are projected to be financially successfully. Moreover, that Mr. Donnell has dedicated substantial time to developing a detailed financial model shows the planning, rigor and seriousness that he has given to this project.

Fourth, based on these documents, Mr. Donnell has secured a letter of intent from a top 100 bank to provide a letter of credit as a precursor to the issuance of the irrevocable LOC commitment required by the *Report and Order*.<sup>8</sup> As is clear, Mr. Donnell has already established a relationship with a qualified bank and has laid the groundwork for issuance of the LOC commitment. Mr. Donnell is extremely confident that the bank will issue the LOC commitment in a timely fashion.

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<sup>4</sup> *Report and Order* at 8786-87 (¶ 54). See also *Public Notice* at 2.

<sup>5</sup> Rural Broadband Experiments – Frequently Asked Questions (FAQs), available at [http://transition.fcc.gov/wcb/FAQs\\_Rural\\_Broadband\\_Experiments.pdf](http://transition.fcc.gov/wcb/FAQs_Rural_Broadband_Experiments.pdf) (last visited Dec. 11., 2014).

<sup>6</sup> The Business Plan is attached hereto as Exhibit 3.

<sup>7</sup> The Summary Income Statement, Cash Flow Statement and Balance Sheet are attached hereto as Exhibit 4. The Capital Model is attached hereto as Exhibit 5.

<sup>8</sup> See Exhibit 1.

Fifth, the public interest supports waiver of the requirement that Mr. Donnell provide audited financial statements. This requirement is intended to be an indicator that the winning bidder will be able to obtain the LOC commitment by the February 3, 2015 deadline. Given the significant steps that Mr. Donnell has taken, it would contravene the public interest in expediting the provision of voice and broadband to unserved locations in 2,585 census blocks if the Commission were to find Mr. Donnell financially unqualified at this time. To the contrary, expeditiously granting the waiver request will facilitate Mr. Donnell's ability to move forward with his plans to obtain the LOC commitment by the February 3, 2015 deadline, bring on additional investors and conduct operations through the limited liability company.

Finally, grant of the requested waiver would be consistent with prior holdings. For example, in *Armstrong Telephone Co.*, Commission staff reinstated and granted an application that did not strictly comply with Commission rules requiring cellular applicants to include a firm financial commitment in their applications.<sup>9</sup> In upholding a Bureau decision, the Commission noted that “[t]he Bureau weighed the public interest concern of expeditiously providing service to the public against strict application of its rule and concluded it was in the public interest to grant the application.”<sup>10</sup> Recently, the Commission granted a waiver of its former defaulter rule to encourage “broad, robust participation in Auction 97, while continuing to ensure that auction bidders are financially reliable.”<sup>11</sup> The Commission also waived its attributable material relationship rules in light of “broader policy objectives” that included the participation of small entities in competitive bidding.<sup>12</sup> These examples demonstrate that policy objectives such as the expeditious provision of service and increased participation by small businesses can override restrictive requirements related to an applicant's financial qualifications. The Commission should apply these same principles here in considering and granting this Waiver Request.

Based on the foregoing, Mr. Donnell respectfully submits that he has justified a waiver of the financial qualifications requirements described in the *Report and Order*, and that he should be found to be financially qualified.

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<sup>9</sup> See *Armstrong Telephone Co.*, 3 FCC Rcd 1665 (1988).

<sup>10</sup> *Id.* at 1666.

<sup>11</sup> See *Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission's Rules and/or for Interim Conditional Waiver*, FCC 14-130 (rel. Aug. 29, 2014), at ¶ 21.

<sup>12</sup> See *Grain Management, LLC's Request for Clarification or Waiver of Section 1.2110(b)(3)(iv)(A) of the Commission's Rules*, FCC 14-103 (rel. July 23, 2014), at ¶ 14.