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December 19, 2014

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

**Re: Agile Network Builders, LLC
FRN 0020449831
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 Agile Network Builders, LLC (“Agile”), attached hereto is Agile’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.¹ The Waiver Request is submitted in accordance with the procedures explained in the Commission’s *Public Notice* provisionally selecting Agile’s application for rural broadband experiment funding to provide fixed broadband services to 687 census blocks in Ohio.² The Waiver Request with the referenced exhibits also is being submitted electronically as an attachment to Agile’s Form 5620, which undersigned counsel and Agile 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, Agile hereby requests confidential treatment of the exhibits to the Waiver Request (the “Information”). This Information includes Agile’s financial statements and projections. Such information is necessary for the Commission – but not the public – to review

¹ 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*”).

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



Ms. Marlene H. Dortch, Secretary
December 19, 2014
Page 2

given that the Commission has proposed to make \$3,224,400 dollars available to Agile and wants to ensure that it is financially qualified.

As required by Section 0.459(b), Agile provides the following information:

1. *Identification of the specific information for which confidential treatment is sought.* Agile requests that the exhibits to the Waiver Request be treated as confidential pursuant to Exemption 4 of FOIA³ and Section 0.459, which protect confidential commercial and other information not routinely available for public inspection. The Information includes financial statements and financial projections. 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 Agile's competitors. If the Information were disclosed, other parties could use it to determine information relative to Agile'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 financial statements and financial projections concerning Agile's operations. 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 Agile's operations. 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. Agile's competitors could assess aspects of Agile's operations and determine the location of its planned towers and customers to undermine Agile's deployment objectives and competitive position.

³ See 5 U.S.C. § 552(b)(4).



Ms. Marlene H. Dortch, Secretary
December 19, 2014
Page 3

6. *Identification of any measures taken by the submitting party to prevent unauthorized disclosure.* Agile's maintains strict security concerning his plans and financial information. Only Agile and persons directly authorized by it 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.* Agile 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 Agile.

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 Agile's plans to deploy fixed broadband service using funds made available by the Commission.

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

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Stephen E. Coran', with a long, sweeping flourish extending to the right.

Stephen E. Coran

Enclosure

Agile Network Builders, LLC
Rural Broadband Experiment Application
Request for Waiver of Financial Requirements

Agile Network Builders, LLC (“Agile”) hereby seeks temporary waiver of the requirement that winning bidders for rural broadband experiment funds provide audited financial statements for the past three years. In lieu of the audited financial statements required by the *Report and Order* to be submitted by December 19, 2014,¹ Agile is submitting at this time the additional information described below and in the exhibits hereto. Accordingly, the Commission should find that Agile is financially qualified.

Background

By *Public Notice* dated December 5, 2014, the Wireless Competition Bureau (“Bureau”) provisionally selected Agile’s application for Category Two rural broadband experiment funding.² Subject to submission of additional information and a final determination of Agile’s technical and financial qualifications, Agile will receive \$3,224,400 to fund construction and operation of voice and fixed broadband services in 687 census blocks in Ohio.

Agile is a telecommunications company based out of Canton, Ohio. Agile’s management is experienced in constructing, deploying, marketing and operating fixed broadband network services.

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 consecutive years of audited financial statements, including balance sheets, net income, and cash flow....”³ 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.⁴

At this time, Agile does not have audited financial statements for the past three years. Accordingly, Agile is providing alternative evidence to demonstrate its financial qualifications. The following is provided in support of this request.

¹ *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*”).

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

³ *Report and Order* at 8786-87 (¶ 54). See also *Public Notice* at 2.

⁴ Rural Broadband Experiments – Frequently Asked Questions (FAQs), available at http://transition.fcc.gov/wcb/FAQs_Rural_Broadband_Experiments.pdf (last visited Dec. 11., 2014).

First, attached hereto as Exhibit 1 are compiled financial statements for calendar years 2011, 2012 and 2013. A compilation is not an audit, but it is significant to note that the compilations were prepared by an experienced accounting firm.

Second, attached hereto as Exhibit 2 are Agile's interim financial statements through November 2014. Again, this shows that Agile is financially responsible and maintains financial controls within its operations.

Third, attached as Exhibit 3 hereto are Agile's financial projections for 2015. This information is based on reasonable assumptions grounded in Agile's demonstrated track record experience and expertise and suggests that, with rural broadband experiment support, the funded operations should be successful. Moreover, the financial projections illustrate Agile's attention to financial discipline and rigor, qualities that are important for rural broadband experiment support recipients.

Fourth, Agile has contracted with an accounting firm to prepare audited financial statements, and will submit those to the Commission when they are complete. Agile anticipates having its 2014 balance sheet audit completed by April 15, 2015 and its 2015 financial audit completed by April 15, 2016. To the extent the Commission requires Agile to prepare audited financial statements for past years, Agile will do so upon request.

Fifth, the public interest supports waiver of the requirement that Agile 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 Agile has taken and has pledged to take, it would contravene the public interest in expediting the provision of voice and broadband to unserved locations in 687 census blocks if the Commission were to find Agile financially unqualified at this time. To the contrary, expeditiously granting the waiver request will facilitate Agile's ability to move forward with its plans to obtain the LOC commitment by the February 3, 2015 deadline.

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.⁵ 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."⁶ 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."⁷ The Commission also waived its attributable material relationship rules in light of "broader policy objectives" that included the participation of small

⁵ See *Armstrong Telephone Co.*, 3 FCC Rcd 1665 (1988).

⁶ *Id.* at 1666.

⁷ 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.

entities in competitive bidding.⁸ 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, Agile respectfully requests that the Commission grant the requested waiver and find Agile to be financially qualified.

⁸ 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.