

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

In the Matter of )  
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 )  
Connect America Fund ) WC Docket No. 10-90  
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 )  
Rural Broadband Experiments )  
 )

**COMMENTS OF THE  
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)<sup>1</sup> herein opposes the various petitions for waiver<sup>2</sup> of the Federal Communications Commission (“Commission”) requirement that winning providers in the rural broadband experiments program submit audited financial information for the most recent three consecutive years by December 19, 2014 as part of the

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<sup>1</sup> USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

<sup>2</sup> See *Mercury Wireless, Inc. Petition for Waiver of Requirement to Provide Three Years of Audited Financial Statements by December 19, 2014 for Rural Broadband Experiments Post-Selection Review*, WC Docket No. 10-90 (filed Dec. 19, 2014) (*Mercury Petition*); *Rural Broadband Services Corporation, Inc. Request for Waiver of Requirement for Three Years of Audited Financial Statements*, WC Docket No.10-90 (filed Dec. 18, 2014) (*RBSC Petition*); *AirNorth Communications, Inc. Petition for Waiver of Audited Financial Statements*, WC Docket No. 10-90 (filed Dec. 17, 2014) (*AirNorth Petition*); *WorldCall Interconnect, Inc. Petition for Waiver In the Matter of Connect America Fund, Broadband Rural Experiments Order*, WC Docket No. 10-90 (filed Dec. 16, 2014) (*WCX Petition*); *Brainstorm Internet Petition for Waiver of Requirement to Provide Three Years of Audited Financial Statements for the Post Selection Review In the Matter of Connect America Fund Rural Broadband Experiments*, WC Docket No. 10-90 (filed Dec. 18, 2014) (*Brainstorm Petition*); *Crystal Broadband Networks Petition for Waiver*, WC Docket No. 10-90 (filed Dec. 17, 2014) (*CBN Petition*); *Tower Communications, LLC Petition for Waiver of Requirement to Provide Three Years of Audited Financial Statements for the Post Selection Review In the Matter of Connect America Fund Rural Broadband Experiments*, WC Docket No. 10-90 (filed Dec. 19, 2014) (*Tower Petition*); *Chafee County Telecom, LLC Request for Waiver*, WC Docket No. 10-90 (filed Dec. 19, 2014) (*Chafee Request*); *De Novo Group Request for Waiver*, WC Docket No. 10-90 (filed Dec. 16, 2014) (*De Novo Request*); *Declaration Networks Group Petition for Waiver*, WC Docket No. 10-90 (filed Dec. 11, 2014) (*DNG Petition*), collectively (*Petitioners*).

program's post-selection review process.<sup>3</sup> On December 23, 2014 the Wireline Competition Bureau of the Commission issued a Public Notice seeking comment on the petitions for waiver of the audited financial statements requirement filed by provisionally selected bidders.<sup>4</sup>

USTelecom objects to all of the waiver requests filed and asks the Commission to deny the applications for failure to submit audited financial records. Petitioners provide various reasons for failing to provide audited financial statements. Some entities claim that they have not been in business for the entire three years for which financial statements are required;<sup>5</sup> others claim that they have never previously had to conduct an independent audit of their financial statements and therefore do not want to have to do it for this purpose.<sup>6</sup> Others claim that they did not have time to get the audited financial statements prepared by the deadline.<sup>7</sup> None of these excuses is adequate to justify a complete waiver of the requirement.

The Commission is acting as a steward of \$100 million in funding provided by rate-payers, and thus correctly recognizes that it must not distribute funding until it determines whether the selected applicants have "the technical and financial qualifications to successfully complete the proposed project within the required timeframes."<sup>8</sup> Audited financial records are an essential showing for the Commission to make this determination and are typically requested

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<sup>3</sup> See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90 and 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, ¶ 54 (2014) (*Rural Broadband Experiments Order*).

<sup>4</sup> See *Wireline Competition Bureau Announces Availability of Additional Funding for Rural Broadband Experiments; Seeks Comment on Waiver Petition of Provisionally Selected Bidders*, WC Docket Nos. 10-90, 14-259, Public Notice, DA 14-1889 (Wireline Comp. Bur. Rel. Dec. 23, 2014).

<sup>5</sup> See *De Novo Request* at 1; *Air North Petition* at 2; *RBSC Petition* at 1; *DNG Petition* at 1.

<sup>6</sup> See *Mercury Petition* at 2-5; *Tower Petition* at 1; *CBN Petition* at 1; *Brainstorm Petition* at 1; *WCX Petition* at 1.

<sup>7</sup> See *Mercury Petition* at 2; *Chafee Request* at 1.

<sup>8</sup> See *Rural Broadband Experiments Order* at ¶ 51.

in Commission auctions.<sup>9</sup> Thus, Petitioners' requests that the Commission need not or should not require audited financial statements<sup>10</sup> lack any foundation and should be rejected.

Moreover, all of these entities have been on notice since the July 11, 2014 *Rural Broadband Experiments Order* that successful bidders would be required to submit three years of audited financial records within 10 days of Public Notice of their winning bid.<sup>11</sup> Therefore, Petitioners' claims that they only had 10 days' notice<sup>12</sup> is inadequate because they should have been preparing for this eventuality by contacting auditors over the past five months. In fact, the Commission post-auction 10-day filing requirement is not new. It is the typical deadline for filing a long form application, including financial information, for Commission auctions.<sup>13</sup> Petitioners fail to provide any information as to why they were unprepared and unable to take these necessary steps prior to filing their waiver requests.

Petitioners that are newly incorporated should still be required to file audited financial statements for the period for which they have been in business. These entities have been actively engaged in this process having full knowledge of the filing requirements and should have been preparing for the potential submission even if only for the time period for which they have been in business. A claim that they have been in business for less than three years does not obviate the need to submit audited financial information for the time period that they have been in business. The Commission then will have to determine, based on this limited track record, whether these entities are "financially and technically qualified to receive experiment support."<sup>14</sup>

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<sup>9</sup> See e.g. 47 C.F.R. §101.1209(d) and 47 C.F.R. §24.720(f)

<sup>10</sup> See *Tower Petition* at 1-2; *WCX Petition* at 3; *AirNorth Petition* at 2-3; *Mercury Petition* at 4-7;

<sup>11</sup> See *Rural Broadband Experiments Order* at ¶54.

<sup>12</sup> See *Mercury Petition* at 5.

<sup>13</sup> See 47 C.F.R. §1.2107(c).

<sup>14</sup> See *Rural Broadband Experiments Order* at ¶54.

In the *Rural Broadband Experiments Order* the Commission anticipated receiving requests for waiver and referenced a “good cause” necessary to meet the Commission’s waiver rule,<sup>15</sup> a petitioner must show “(i) special circumstances that warrant a deviation from the general rule, and (ii) such deviation is in the public interest.”<sup>16</sup> Any claim by Petitioners that special circumstances exist here is invalid, because the companies knew the requirements when they applied, and simply did not take the necessary action to comply until it was too late. Furthermore, it cannot be in the public interest for the Commission to waive this rule—and thus forfeit its ability to do a thorough financial review—for companies merely based upon their unwillingness to be prepared when they were given fair notice. Furthermore, the rural broadband experiments are designed for the Commission to “explore how to structure the Connect America Fund Phase II competitive bidding process.”<sup>17</sup> Failing to enforce the requirements for all participants at this stage sets a precedent for leniency with respect to the upcoming CAF Phase II auction, in which the stakes are much higher for customers in rural and high-cost areas.

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<sup>15</sup> 47 C.F.R. §1.3.

<sup>16</sup> See *Rural Broadband Experiments Order* at ¶95 (citing, *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

<sup>17</sup> See *Rural Broadband Experiments Order* at ¶ 1.

For the reasons discussed above, the Commission should deny all waiver petitions immediately. Dismissal will uphold the purpose of the rules and ensure that the Commission is able to perform a thorough examination of the financial qualifications of successful bidders before distributing \$100 million in rate-payer funds.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



By: \_\_\_\_\_

Jonathan Banks  
Sr. Vice President, Law and Policy

B. Lynn Follansbee  
Vice President, Law and Policy

Its Attorneys

607 14<sup>th</sup> Street, NW, Suite 400  
Washington, D.C. 20005  
202-326-7300

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