

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |
| |) | |
| Petitions for Waiver |) | WC Docket No. 14-259 |
| |) | |

**COMMENTS OF AMERICAN CABLE ASSOCIATION
ON THE WAIVER PETITIONS FILED BY PROVISIONALLY SELECTED BIDDERS**

The American Cable Association (“ACA”) hereby files comments in response to the Federal Communications Commission’s (“Commission’s”) Public Notice seeking comment on the petitions for waiver of the audited financial statements requirement filed by provisionally selected bidders in the Rural Broadband Experiments (“RBE”) program.¹ Attachment B of the Public Notice lists 15 bidders that filed petitions for waiver pursuant to 47 C.F.R. §1.3, which permits the Commission to waive its rules if good cause is shown.² Most of the requested waivers were filed by smaller entities seeking relief, either permanent or temporary, from the

¹ See *Wireline Competition Bureau Announces Availability of Additional Funding for Rural Broadband Experiments; Seeks Comment on Waiver Petitions of Provisionally Selected Bidders*, Public Notice, WC Docket Nos. 10-90 and 14-259, DA 14-1889 (rel. Dec. 23, 2014).

² See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 *et. al.*, 29 FCC Rcd 8769, n. 162 (2014) (“*RBE Order*”), which, citing *Northeast Cellular Telephone Co. v. FCC*, 897 F. 2d, 1164, 1166 (D.C. Cir. 1990), states “The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest... The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.”

requirement that they provide, within 10 business days of public notice, “the most recent three consecutive years of audited financial statements.”³

In adopting the RBE program, the Commission set forth a rigorous post-selection review process to ensure winning bidders have “the technical and financial qualifications to successfully complete the proposed project within the required timeframes.”⁴ ACA supports this review process, which it believes is essential to maintain the accountability and integrity of the program, and it supports the requirement that winning bidders supply audited financial statements. At the same time, the Commission should balance this requirement with the value derived from having smaller providers participate in the program. As noted in some of the petitions, smaller providers that have demonstrated experience in the industry often have not needed to obtain audited financial statements in the normal course of business, and they are willing to produce them if provided with additional time (often in the range of 90 to 120 days).⁵ ACA submits that this approach should form the basis for grant of a waiver petition.

ACA has held conversations with its members about the production and value of audited financial statements and found:

- Private entities accept the need to obtain audited financial statements when obtaining funding from banks and other public sources and in other circumstances (e.g., when outside private investors demand such statements);
- Depending on the sources of their funding, private entities operating ongoing businesses may have not needed to obtain audited financial statements;

³ See *RBE Order*, 29 FCC Rcd at 8787-88, ¶ 54.

⁴ See *id.* at 8787, ¶ 52.

⁵ See e.g., Petition for Waiver filed by Mercury Wireless, Inc., WC Docket No. 10-90 (Dec. 19, 2014) (“Mercury Petition”); Petition for Waiver filed by Chafee County Telecom, LLC, WC Docket No. 10-90 (Dec. 19, 2014); Petition for Waiver filed by Tower Communications, LLC, WC Docket No. 10-90 (Dec. 19, 2014); Petition for Waiver filed by Worldcall Interconnect, Inc., WC Docket No. 10-90 (Dec. 16, 2014) (“Worldcall Petition”). In the interim, some of these petitions have submitted unaudited financial statements. See e.g., Mercury Petition at 2, and Worldcall Petition at 3.

- Initial financial audits can be costly and thus entities, particularly smaller businesses, are reluctant to undergo them unless necessary;⁶ and
- For entities that have not undergone a financial audit, it will take approximately three to four months, if not longer, to produce audited statements for the first time.⁷

Accordingly, it is reasonable to conclude that the Commission would meet its fiduciary responsibilities, enhance the objectives of the RBE program, serve the public interest, and, therefore, have good cause to grant a waiver in those instances where a winning bidder, within 10 business days after the “winning bidder” notice is issued, submits information demonstrating it has been operating for three consecutive years⁸ and commits to submit audited financial statements within a reasonable time (at most 120 days).⁹

⁶ For example, a small entity participating in the RBE process would not want to incur the cost of an audit unless it was a winning bidder.

⁷ Part of the reason it will take months to conduct an initial financial audit is that an unaudited entity is unlikely to have financial records compliant with Generally Accepted Accounting Principles and will need to create such records from their existing financial documentation.

⁸ There are numerous ways a winning bidder can demonstrate it has been operating for three consecutive years of operations, including by filing unaudited financial statements or corporate income tax filings.

⁹ In these comments, ACA only addresses petitions for waiver where the petitioner commits to filing audited financial statements at a later date. It does not address other issues raised in any of the petitions for waiver.

While not addressed in these comments, ACA notes that if the winning bidder is an affiliate of another entity, it should be permitted to rely on the financial wherewithal of the parent or related entity, so long as the parent or related entity commits its financial resources to the affiliate.

Respectfully submitted,



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January 6, 2015

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