

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |
| |) | |
| Rural Broadband Experiments |) | WC Docket No. 14-259 |
| |) | |

REPLY COMMENTS OF MERCURY WIRELESS, INC.

Mercury Wireless, Inc. (“Mercury Wireless”) hereby submits reply comments in support of its petition for waiver of the audit requirement for provisionally selected bidders in the Rural Broadband Experiments program.¹ Contrary to the comments submitted by only a small handful of other parties, good cause exists to grant the waiver requests filed by Mercury Wireless and others. Alternatively, if audited financial statements are required, then consistent with the approach recommended by the American Cable Association (“ACA”), and consistent with the timeframes for other requirements of the Rural Broadband Experiments program, such as achieving Eligible Telecommunications Carrier (“ETC”) designation, the Commission should provide a reasonable amount of additional time (90-120 days) for the preparation and submission of the audited statements.² Doing so will benefit consumers by ensuring that Rural Broadband Experiments are conducted in the most cost-effective manner possible by financially qualified providers.

¹ See Petition for Waiver of Mercury Wireless, Inc., WC Docket No. 10-90 (filed Dec. 19, 2014) (“Mercury Wireless Petition”); see also *Wireline Competition Bureau Announces Availability of Additional Funding for Rural Broadband Experiments; Seeks Comment on Waiver Petitions of Provisionally Selected Bidders*, WC Docket Nos. 10-90, 14-259, Public Notice, DA 14-1889 (rel. Dec. 23, 2014) (“Waiver Petitions Public Notice”).

² See Comments of American Cable Association, WC Docket Nos. 10-90, 14-259 at 3 (filed Jan. 6, 2015) (“... [S]maller 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). ACA submits that this approach should form the basis for grant of a waiver petition.”).

The Commission must take note that of the bidders provisionally selected to receive Rural Broadband Experiment funding nearly half have filed petitions for waiver of the audit requirement.³ Disqualifying all of these providers – many of which are smaller companies – based only on the fact that they have not needed audited financials before, and were unable to have independently audited financial statements prepared by the December 19 deadline, would not accomplish the Commission’s objectives in this proceeding and would not serve the public interest.

I. GOOD CAUSE EXISTS TO GRANT A WAIVER FOR MERCURY WIRELESS.

Only a small handful of parties filed comments objecting to the Commission granting requests for waiver of the audit requirement. Overall, these commenters based their opposition on the argument that the parties requesting waivers should have had enough time to conduct an independent audit of their financial statements by the December 19 filing deadline because the Commission included the requirement in the *Rural Broadband Experiments Order*.⁴ This argument, however, overlooks the fact that provisionally selected applicants only knew with certainty that they would have to provide audited financials by the December 19 deadline as of December 5, 2014, when the Commission’s public notice was released.⁵ Small rural businesses such as Mercury Wireless, that have not needed audited financials before, would not undertake the time and expense of obtaining audited financials unless they knew with certainty that they would be provisionally selected for the Rural Broadband Experiments program and the audited financials would be needed.

³ See Waiver Petitions Public Notice at Attachment B.

⁴ See, e.g., Comments of Midwest Energy Cooperative, WC Docket Nos. 10-90, 14-259, at 3 (filed Jan. 6, 2015); Comments of the United States Telecom Association, WC Docket No. 10-90, at 3 (filed Jan. 6, 2015); Comments of Lake Region Electric Cooperative, Ozarks Electric Cooperative Corporation, and Northeast Rural Services, WC Docket Nos. 10-90, 14-259 (filed Jan. 5, 2015).

⁵ See *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, WC Docket No. 10-90, Public Notice, DA 14-1772 (rel. Dec. 5, 2014).

A. Waiver of the Audit Requirement, or Grant of Additional Time, Is An Appropriate Mechanism for Relief Because a Small Business Could Not Reasonably Be Expected to Undertake the Significant Time and Expense of Producing Audited Financials Without Certainty That the Applicant Would Be Chosen for the Rural Broadband Experiments Program.

As noted by ACA, depending on the sources of their funding, many small, private companies have not previously needed to obtain independently audited financial statements.⁶ Indeed, as Mercury Wireless explained in its waiver petition, the company has not needed to have its financial statements independently audited because during its seven years of operation, it has been either privately or self-funded through revenue from operations.⁷

Furthermore, as emphasized by ACA, initial financial audits can be costly and, for entities that have not undergone a financial audit, it can take a significant amount of time, up to four months, if not longer, to produce audited statements for the first time.⁸ This is consistent with the feedback Mercury Wireless received from third-party auditors. In order to comply with the Commission's audited financials requirement, Mercury Wireless contacted multiple independent auditors, each of whom informed the company that completion of an independent audit would take up to four months or longer.⁹ Additionally, the cost of completing the audit, as well as the cost of internal staff time to support the audit, is significant.

A small, privately-owned and self-funded business such as Mercury Wireless, which is focused on serving rural markets in Kansas and Indiana, could not reasonably be expected to undertake this significant expense and time commitment to conduct an independent financial audit based only on the mere possibility that the company might be selected as a winning bidder out of

⁶ See ACA Comments at 2.

⁷ See Mercury Wireless Petition at 1.

⁸ See ACA Comments at 3.

⁹ See Mercury Wireless Petition at 5, Exhibit A (Declaration of Anastasia Krotov, ¶ 5).

the nearly 200 applicants for Rural Broadband Experiment funding.¹⁰ Committing the significant time and financial resources that are required for an independent audit without any certainty that the audit would ultimately be necessary would have been impractical for Mercury Wireless given its small size and the inherent costs and demands of maintaining and continuing to expand advanced communications services for customers in underserved, rural areas. Moreover, Mercury Wireless did not determine that it would apply for Rural Broadband Experiment funding until September 2014. Thus, even if the company had expended the significant resources to begin an independent audit immediately upon deciding to apply for the Rural Broadband Experiments program, it could not have completed the four-month process to complete the audit by the December 19 filing deadline.

Mercury Wireless demonstrated its financial qualifications by providing its unaudited financial statements, including balance sheets, net income, and cash flow, from the most recent three years with its Form 5620. The financial statements demonstrate Mercury Wireless's good standing of capital and operating funds.¹¹ Mercury Wireless's seven-year track record, providing wireless broadband services to rural communities in Kansas and Indiana, together with its financial statements, reveals that the company has been successful in providing rural broadband services that are economical for consumers and have yielded a modest profit margin,¹² and that Mercury Wireless is deserving of selection as a provider in the Rural Broadband Experiments program.

B. Mercury Wireless Agrees with NTCA that the Commission Should Consider an Applicant's Prior Track Record of Success in Rural Communities When Considering the Waiver Requests.

In addition to review of the company's unaudited financial statements, Mercury Wireless agrees with NTCA that the Commission's review of the waiver petitions also should take into account the waiver applicant's prior track record of success in delivering advanced communications

¹⁰ See *Rural Broadband Experiments Draw Interest from Almost 200 Applicants*, Public Notice (rel. Nov. 12, 2014).

¹¹ See Mercury Wireless Petition at 5.

¹² See *id.*

services to rural communities.¹³ In particular, NTCA argues that grant of any waiver should turn upon a showing that the applicant is actually familiar with the area it intends to serve, has operated in or near that area or areas like it for a sustained period in the past, and that the applicant has had the experience of delivering quality, reasonably affordable services to consumers in such areas over a period of time longer than a year or two.¹⁴

Based on the factors suggested by NTCA, Mercury Wireless's demonstrated track record of providing high-speed, wireless broadband and voice service to consumers and anchor institutions in rural Kansas and Indiana clearly supports grant of a waiver. In Kansas, where the company has been provisionally selected to receive Rural Broadband Experiment funding, the company has provided advanced broadband and voice communications services for approximately seven years, focusing on expanding access to advanced communications services for underserved, rural communities. Mercury Wireless provides high-speed, wireless broadband and VoIP services to community anchor institutions in rural Kansas, including multiple public schools. The company, which currently serves more than 3,000 subscribers in Kansas alone, is very familiar with the rural Kansas communities it will serve with Rural Broadband Experiment funding.

II. ABSENT FULL WAIVERS, THE COMMISSION WILL SERVE THE PUBLIC INTEREST BY PROVIDING A REASONABLE AMOUNT OF ADDITIONAL TIME FOR WAIVER APPLICANTS TO SUBMIT AUDITED FINANCIAL STATEMENTS.

Mercury Wireless believes that its unaudited financial statements, together with its demonstrated track record of serving rural areas in Kansas and Indiana, are sufficient to demonstrate its financial qualifications. The company, however, also has offered to provide audited

¹³ See Comments of NTCA-The Rural Broadband Association, WC Docket Nos. 10-90, 14-259, at 2 (filed Jan. 6, 2015).

¹⁴ See *id.* at n. 3.

financial statements if, consistent with ACA’s recommendation,¹⁵ the Commission grants a waiver providing a reasonable amount of additional time (90-120 days) for the company to do so.¹⁶

Of the bidders provisionally selected to receive Rural Broadband Experiment funding, nearly half have filed petitions for waiver of the audited financial statements requirement.¹⁷ Disqualifying all of these providers – many of which are smaller companies – based only on their inability to submit independently audited financial statements by December 19 would not accomplish the Commission’s objectives in this proceeding and would not serve the public interest. To the contrary, absent full waivers of the audit requirement, it will serve the public interest for the Commission to allow otherwise qualified, provisionally selected bidders – the most cost-effective bidders for the rural areas in question – a reasonable amount of additional time to complete and submit independently audited financial statements.

Indeed, the Commission anticipated that other post-selection review requirements could not or would not be satisfied within 10 business days from the date the provisionally selected bidders were announced and provided additional time to satisfy those requirements. For example, provisionally selected bidders are permitted to obtain ETC designation within 90 days after the selected bidders were announced, with an express possibility of waiver relief if they act in good faith but are unable to meet that deadline.¹⁸ Provisionally selected bidders should be similarly afforded a

¹⁵ See ACA Comments at 3.

¹⁶ See Mercury Wireless Petition at 2.

¹⁷ See Waiver Petitions Public Notice at Attachment B.

¹⁸ 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, ¶ 22, n. 52 (2014) (“We expect entities selected for funding to submit their ETC applications to the relevant jurisdiction as soon as possible after release of the public notice announcing winning bids, and will presume an entity to have shown good faith if it files its ETC application within 15 days of release of the public notice. A waiver of the 90-day deadline would be appropriate if, for example, an entity has an ETC application pending with a state, and the state’s next meeting at which it would consider the ETC application will occur after the 90-day window.”).

reasonable window of time (90-120 days) within which to complete the costly and time-intensive process of preparing and submitting independently audited financial statements.

Contrary to a few comments in opposition to the waiver requests,¹⁹ granting waiver requests in this manner would not harm other applicants who complied with the audit requirement, nor would it harm the public interest. All applicants had the option to file a petition for waiver, and the fact that another company may have been able to comply with the audited financials requirement does not mean that a waiver is not warranted in the case of other applicants. Indeed, granting Mercury Wireless's waiver request – as well as other similarly situated waiver applicants – in this manner will benefit the public interest by honoring the Commission's initial decisions about this funding, and ensuring that the Rural Broadband Experiments are used to provide service to high-cost, rural areas in the most cost-effective manner by entities that are financially qualified to successfully complete the projects. Moreover, as emphasized by ACA, granting the waiver requests on the basis described above will allow the Commission to balance its duty to maintain the accountability and integrity of the Rural Broadband Experiments program with the value derived from having smaller providers such as Mercury Wireless participate in the program.²⁰ By so doing, the Commission will “meet its fiduciary responsibilities, enhance the objectives of the [Rural Broadband Experiment] program, [and] serve the public interest”²¹

III. CONCLUSION.

Good cause exists to grant the waiver requests filed by Mercury Wireless and others. Alternatively, if audited financial statements are required, then consistent with the approach recommended by ACA, the Commission should provide a reasonable period of up to 120 days for

¹⁹ See, e.g., United States Telecom Association Comments at 4; Lake Region Electric Cooperative, Ozarks Electric Cooperative Corporation, and Northeast Rural Services Comments at 2.

²⁰ See ACA Comments at 3.

²¹ *Id.*

the preparation and submission of the audited statements. Doing so will be consistent with the Commission's approach to other post-selection review requirements and will benefit the public interest by ensuring that Rural Broadband Experiments are conducted in the most cost-effective manner possible by financially qualified providers.

Respectfully submitted,

_____/s/_____
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