

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

RURAL BROADBAND EXPERIMENTS)

Docket Nos. 10-90, 14-259

**RESPONSE OF
Michael D. Donnell d/b/a SAN JOAQUIN BROADBAND
TO COMMENTS ON
WAIVER PETITIONS OF PROVISIONALLY SELECTED BIDDERS**

TO THE COMMISSION:

Michael D. Donnell dba SAN JOAQUIN BROADBAND (“SJB or “Mr. Donnell”) pursuant to the *Public Notice* released by the Wireline Competition Bureau (“Bureau”) on December 23, 2014,¹ hereby replies to the Comments and other submissions regarding Waiver Petitions of Provisionally Selected Bidders for Rural Broadband Experiment funding and regarding SJB’s request for its own said waiver (“Waiver Request”).² No party has addressed, nor contested, the merits of the Waiver Request and the demonstration of “good cause”. SJB also urges the Commission to grant waivers of the requirement that winning bidders for rural broadband experiment funds provide audited financial statements for the past three years to the entities that submit alternative evidence that demonstrates they are financially qualified.

In its Waiver Request, SJB demonstrated the financial viability and experience of Mr. Donnell and SJB. Because Mr. Donnell is an individual, and SJB is a newly-formed entity, he does not have audited financial statements. In lieu of audited financials, SJB submitted detailed financial projections, a letter of intent to provide a letter of credit from a bank that is among the

¹ *Public Notice*, “Wireline Competition Bureau Announces Availability of Additional Funding for Rural Broadband Experiments; Seeks Comment on Waiver Petitions of Provisionally Selected Bids,” DA 14-1889 (rel. Dec. 23, 2014 (“*Public Notice*”).

² See SJB Request for Waiver of Financial Requirements, WC Docket No. 10-90 (filed Dec. 19, 2014)

100 largest banks in the U.S.³, and Mr. Donnell's resume showing his track record and success in building and operating wireless networks. SJB also demonstrated that grant of its Waiver Request would be consistent with Commission decisions granting applications that did not strictly comply with financial requirements because of compelling public interest concerns in expediting service to the public.⁴

The Commission set forth clear standard requirements for firms seeking Rural Broadband Experiment funding. As part of this application review process, the Commission mandated that applicants must demonstrate that it has the technical and financial qualifications to successfully complete the proposed project within the required timeframes.⁵ To provide the Commission the information necessary to perform a review of a selected bidder's financial qualification, the Commission required the bidder to provide three consecutive years of audited financial statements.⁶ The Commission, however, also recognized that newly-formed entities might not have this information on hand. Therefore, when answering the question of "What should an entity do if it is newly-formed and does not have three years of audited financial statements available?" the Commission allowed the newly-formed entity to

[]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.⁷

³ *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) ("Rural Broadband Experiments Order") at ¶59

⁴ See Waiver Request at 2.

⁵ Rural Broadband Experiments Order at ¶52

⁶ Rural Broadband Experiments Order at ¶¶54, 63

⁷ Rural Broadband Experiments – Frequently Asked Questions (FAQs) at V. Application Process - Paragraph F., available at http://transition.fcc.gov/wcb/FAQs_Rural_Broadband_Experiments.pdf (downloaded on Aug 30, 2014; last viewed Jan 11, 2015) ("Rural Broadband Experiment FAQs")

This allowance from the Commission encouraged startups and other applicants to seek waivers if audited financials were not available. SJB lauds the Commission in its encouragement of a wide variety of entities to participate in the Rural Broadband Experiments as this serves the public good.

SJB disagrees that in granting petitioner waivers that the Commission sets a “precedent for leniency”⁸ as has been suggested by United States Telecom Association, or that it is “not fair to those that have complied with the audited financial statement requirement”⁹ as suggested by Skybeam, LLC. The process for a waiver of the requirement was clearly set forth by the Commission prior to when the bids were due.¹⁰

Generally reversing the allowance for waivers at this late stage, after significant expenses and time have been invested in the process by bidders, would only serve to break the public’s trust in the Commission of keeping its word, and would not serve the public any good.

The Commission adopted a streamlined application process to encourage a wide variety of entities, (including small entities) to participate, and expected some entities to already have audited financial statements on hand¹¹. To minimize the resources that entities need to spend upfront in case they do not win support, the Commission was willing to accept information that was already on hand, such as audited financial statements. *Id.* Entities that did not have audited

⁸ Comments, USTelecom: WC Docket Nos. 10-90, 14-259 (Jan, 8, 2015).

⁹ Comments, Skybeam, LLC: WC Docket Nos. 10-90, 14-259 (Jan, 6, 2015).

¹⁰ Rural Broadband Experiment FAQs

¹¹ Rural Broadband Experiments Order at Appendix B ¶71

financial statements were instructed to provide alternative evidence¹² to demonstrate that their projects are financially viable.

A careful review of the Commission instructions shows that the requirement for audited financial statements were dual purpose. First, to provide means for the Commission staff to review financial qualifications. Second, to ease the burden of submitting a bid in an effort to encourage more participation--by only requiring information that “winning bidders will already have on hand”. The Commission stated,

the information we require to conduct such a review is information we expect winning bidders will already have on hand (e.g., audited financial statements) or will have developed as a result of planning their project (e.g., a network diagram certified by an engineer and a description of spectrum access).¹³

By requiring newly-formed entities to provide alternative evidence, the Commission has raised the standard, not lowered it, for those entities to demonstrate financial feasibility. The Commission encouraged bidders to take appropriate steps to determine that their projects are financially viable before submitting bids. *Id.* Detailed financial projections of the projects for the full ten years may actually prove to better demonstrate the financial qualifications of the proposed project than past year audited financial statements of the entity do. If detailed projections from the petitioner are based on reasonable financial projections and show that the funded operations are projected to be financially successful that would serve to demonstrate that it is financially qualified.

All entities, whether they have submitted audited financial statements or alternative evidence, are required to demonstrate that they have financially viable project plans. It is

¹² Rural Broadband Experiment FAQs

¹³ Rural Broadband Experiments Order at Appendix B ¶71

important to note that entities that have submitted audited financial statements are still subject to the review of the Commission staff regarding their financial qualifications.

[All] winning bidders will be required to demonstrate that they have the technical and *financial* qualifications to successfully complete their proposed projects within the required timeframes[]. The Commission staff will perform a review to ensure that the applications meet our expectations for technical and *financial* capability.¹⁴

SJB encourages the Commission staff to critically review the applications of all entities and to not prejudice the applications on whether or not they have submitted audited financial statements. Simply having audited financial statements in itself is no indication of financial viability. An entity that has audited financials could very well be on the verge of bankruptcy. A careful review of the financial information provided about all entities and their proposed projects are necessary. In fact, an existing company with a high amount of debt could actually be riskier than a newly-formed company that has little or no debt.

SJB agrees with the comments from NTCA - The Rural Broadband Association in that it is also important to consider the relevant experience¹⁵ of the selected bidders. Whether the Commission is reviewing the qualifications of a newly-formed or existing entity, an entity that has provided the resumes of its management with relevant demonstrated leadership experience, that show a track record of success in building and operating broadband and voice networks should be weighed very favorably into the determination of the entity's qualifications to successfully complete the proposed projects within the required timelines.

The FCC is wise to require an irrevocable letter of credit ("LOC"), as they are placing the ultimate burden and responsibility to execute a successful project plan on the bid winner. The

¹⁴ Rural Broadband Experiments Order at ¶63

¹⁵ Comments, NTCA - The Rural Broadband Association: WC Docket Nos. 10-90, 14-259 (Jan, 6, 2015).

LOC virtually assures that the funds will either be used for the intended purpose or returned. However, audited financial statements require interpretation and the application of judgment and opinion on the quality of the debt worthiness of the company. It is not clear from the comments given whether audited financial statements are really an effective means to determine the likelihood of funds being effectively deployed for the intended objective. However, SJB suggests that the ultimate, and most effective, indication of worthiness may simply be shown in the ability of the bidder to secure and maintain the required LOC, which is a requirement that has already been put forth from the Commission in its wisdom.

In summary, the Commission rules allow for entities to be granted a waiver of the requirement to submitted audited financial statements as long as alternate evidence is supplied. Audited financials alone are not an indication of financial feasibility, nor should submitting them guarantee winning bidders will be approved. The financial qualifications of all entities, whether they have requested a waiver or not, should be scrutinized by the Commission staff. If a new entity, without audited financial statements, submits a thorough plan that is financially qualified and also secures the required LOC, they should be granted a waiver from the requirement to provide audited financial statements.

Respectfully submitted,

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