

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

In the Matter of)	
)	WC Docket No. 10-90
Waiver Petitions for Provisionally Selected)	
Bidders for Rural Broadband Experiments)	WC Docket No. 14-259
)	

REPLY COMMENTS OF THE UTILITIES TELECOM COUNCIL

The Utilities Telecom Council (UTC) hereby provides the following reply comments in response to the Commission’s Public Notice in the above-referenced proceeding.¹ UTC opposes the petitions for waiver filed by certain selected bidders for rural broadband experiments, and echoes the comments filed by other parties which overwhelmingly oppose the requested waivers of the financial and technical requirements.²

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

² 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).

The Petitioners fail to satisfy the standard for a waiver. Specifically, the Petitioners fail to show “(i) special circumstances that warrant a deviation from the general rule, and (ii) such deviation is in the public interest.”³

Petitioners fail to show special circumstances, because they were well-aware of the financial and technical requirements when they applied for funding for rural broadband experiments. They had ample time to prepare their filing of the required three years of audited financials and the required technical information including the network diagram. Moreover, the requirements they ask the Commission to waive are the same requirements that numerous other applicants have satisfied. As such, there are no special circumstances that would warrant a deviation from the general rule.

Petitioners also fail to show that a waiver would be in the public interest. The required financial and technical information is necessary for the Commission to ensure that the applicants are legally, technically and financially qualified to provide rural broadband experiments. Moreover, if the Commission extended the time for Petitioners to provide this information, it could delay the process for both the rural broadband experiments and Phase II of the Connect America Fund – thereby frustrating the overriding goal of providing broadband to unserved areas.

The comments on the record overwhelmingly oppose the Petitioners. As the comments by Midwest Energy Cooperative explain, the required information was “known to everyone at the outset of this process” and “has helped the Bureau undertake a thorough review to determine the ability of the provisionally selected bidders to satisfy

³ *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, 8787-88 at ¶95 (citing, *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

the service obligations for their selected projects.”⁴ As the joint comments of Lake Region Electric Cooperative, Ozarks Electric Cooperative Corporation, and Northeast Rural Services stated “[e]ach of the Utilities have timely filed their RBE applications, and each of them have made supplemental filings in response to the Commission’s Public Notice of December 18, 2014, requesting the same financial and technical information that was requested from the provisionally selected applicants.”⁵ Finally, as Barry Electric Cooperative stated, “[t]he inability to provide financial data must raise the question, what if any broadband/fiber business the entities are currently successfully or unsuccessfully operating and whether the entity has the capability to successfully operate a broadband project.”⁶ These utilities have demonstrated that the requirements are reasonable and are not an undue burden; and thus that Petitioners have failed to show unique circumstances.

Furthermore, the comments of United States Telecom Association explain that “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.”⁷ Moreover, as the RBE program will set the stage for the CAF Phase II process, “[f]ailing to enforce the requirements for all participants at this stage sets a precedent for leniency with respect to

⁴ Comments of Midwest Energy Cooperative in WC Docket No. 10-90 at 2 (filed Jan. 6, 2015).

⁵ Comments of Lake Region Electric Cooperative, Ozarks Electric Cooperative Corporation, and Northeast Rural Services in WC Docket No. 10-90 at 1 (filed Jan. 5, 2015).

⁶ Comments of Barry Electric Cooperative in WC Docket No. 10-90 at 1 (filed Jan. 6, 2015)

⁷ Comments of United States Telecom Association in WC Docket No. 10-90 at 1 (filed Jan. 5, 2015).

the upcoming CAF Phase II auction, in which the stakes are much higher for customers in rural and high-cost areas.”⁸

The Commission should reject the comments by the American Cable Association, which suggests that the Commission should waive the deadline for submitting the required financial information. Specifically, ACA suggests that applicants should be permitted to submit within 10 business days after the notice is issued, information demonstrating it has been operating for three consecutive years and that it will commit to submitting the audited financial statements within a reasonable time (at most 120 days).⁹ UTC submits that ACA’s comments threaten to undermine the integrity of the process by providing preferential treatment to certain providers over others, which could lead to future litigation that challenges the legality of waivers that are granted by the Commission. This would indefinitely delay the Commission from awarding funding until the litigation is concluded. This would frustrate the public interest in accelerating the deployment of broadband to unserved areas. As such, the Commission should reject ACA’s comments and not grant a waiver of the financial requirements to the Petitioners.

To be sure, some of the Petitioners are start-up companies that lack three years of financials to provide to the Commission, audited or not. As US Telecom points out though, these Petitioners could have provided audited financials for the number of years they have been in business, even if it is less than three. That would provide the Commission with *some* basis for evaluating the financial qualifications of the applicant to provide rural broadband experiments. While the Commission did state that a waiver

⁸ *Id.*

⁹ Comments of the American Cable Association in WC Docket No. 10-90 at 3 (filed Jan. 5, 2015).

would be considered in such circumstances, it also directed applicants to submit some financial information along with the waiver.¹⁰ However, the Petitioners failed to even provide minimal audited financial information. Therefore, the Commission would be justified to deny a waiver, even to these start-ups that failed to provide insufficient audited financial information.

For all of these reasons, UTC opposes the Petitioners and supports the comments opposing the waiver requests.

Respectfully submitted,

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¹⁰ “If a winning bidder is unable to produce three consecutive years of financial statements, it should file for 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.”

