

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

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

**EMERGENCY REQUEST FOR EXPEDITED TREATMENT**

**LENNON TELEPHONE COMPANY**

**AMENDED APPLICATION FOR REVIEW OF DECISION TO REMOVE LENNON  
TELEPHONE COMPANY FROM RURAL BROADBAND EXPERIMENTS  
AND  
PETITION FOR WAIVER OF RURAL BROADBAND EXPERIMENTS AUDITED  
FINANCIAL STATEMENTS REQUIREMENT**

Pursuant to Section 1.115 of the rules of the Federal Communications Commission (“FCC” or “Commission”),<sup>1</sup> Lennon Telephone Company (“Lennon” or the “Company”) hereby requests review of the decision of the Wireline Competition Bureau (“WCB”) to remove Lennon from the Rural Broadband Experiments (“RBE”) “for failing to file the required financial information and not submitting a waiver request.”<sup>2</sup> Lennon filed **two years of** financial statements that were reviewed by an independent auditor, as the company is not formally audited in the normal course of business.<sup>3</sup> As explained below, Lennon’s reviewed financial statements are appropriate and

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<sup>1</sup> 47 C.F.R. § 1.115.

<sup>2</sup> See *Connect America Fund; Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-259, Order, DA 15-139 (rel. Jan. 30, 2015) (“January 30 Order”).

<sup>3</sup> **Lennon’s financial statements for 2012 and 2013 were reviewed by an independent auditor. The Company’s 2011 compiled financial statements were submitted as well. The Company will submit its 2014 financial statements reviewed by an independent auditor as soon as the statements have been prepared.**

accepted in other high-cost Universal Service Fund (“USF”) contexts, and the Company assumed that would be the case for the RBE requirements as well. Lennon hereby requests review of the WCB’s decision and further requests to remain a provisional winner of RBE support. Furthermore, out of an abundance of caution, Lennon’s consultants had requested guidance from WCB staff as to whether a waiver was required and were waiting to hear a response from staff when the January 30 Order was released. Accordingly, Lennon hereby submits a petition for waiver of the audited financial statement requirement for the projects that it has requested to remain under consideration for RBE support.<sup>4</sup>

## **I. REQUEST FOR REVIEW OF WCB DECISION**

### **a. Background**

Lennon was announced a provisional winner of \$60,000 in RBE support to deploy broadband in two extremely high cost census blocks in rural Michigan.<sup>5</sup> Lennon intends to utilize this support to deliver broadband capable of at least 10/1 Mbps to extremely remote, heavily forested areas in Michigan where service from another provider is extremely unlikely. Lennon has expended considerable resources and time into the RBE since the opportunity was first announced in early 2014. Once the Company was announced a provisional winner, it quickly moved forward with ensuring that the proper documentation to show technical and financial capability would be submitted timely and correctly. On January 6, Lennon furthermore submitted a request to remain under consideration for additional projects, again submitting documentation to show the Company’s technical and financial capabilities.

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<sup>4</sup> See Lennon Telephone Company submission of financial and technical documents, WC Docket Nos. 10-90, 14-259 (filed January 6, 2015).

<sup>5</sup> 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 (rel. December 5, 2014).

Upon submitting its financial statements for the projects for which the Company requested to remain under consideration for further RBE disbursements, Lennon inquired of its consultants if its financial statements reviewed by an independent auditor would meet the criteria. Lennon's consultants immediately reached out to WCB staff to inquire if the reviewed financial statements were sufficient or if Lennon needed a waiver. WCB staff did not respond to this request, and Lennon continued to move ahead with plans to submit a Letter of Credit commitment letter on February 3, 2015.

**b. Accepting Lennon's Previously-Submitted Financial Statements is Consistent with Commission Precedent and in the Public Interest**

Lennon submits financial statements annually to the FCC, the Universal Service Administrative Company ("USAC"), and the Michigan Public Service Commission in order to qualify to receive high-cost USF. Lennon fully complies with 47 C.F.R. 54.313(f)(2) which requires that privately held rate-of-return carriers submit "a full and complete report of the company's financial condition and operations as of the end of the preceding fiscal year, which is audited and certified by an independent certified public accountant *in a form satisfactory to the Commission*, and accompanied by a report of such audit"<sup>6</sup> (emphasis added). Lennon submitted the same financial statements reviewed by an independent auditor **and compiled 2011 financial statements** to the FCC for the RBE financial statement requirement as the Company submitted in its Eligible Telecommunications Carrier ("ETC") Annual Reports (or "Form 481") each year for the past three years.<sup>7</sup> At no point has the Commission stated that financial statements reviewed by

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<sup>6</sup> 47 C.F.R. 54.313(f)(2).

<sup>7</sup> **The Company began having its financial statements reviewed by an independent auditor in 2012, in part to be in compliance with the ETC Annual Report requirements.**

an independent auditor were not in a form satisfactory to the Commission. In fact the contrary is true.

In the Fifth Order on Reconsideration, the FCC concluded,

“requiring the underlying financial information to be subject to a CPA review, rather than a CPA audit, provides sufficient assurance that we will obtain a reasonable understanding of the affected companies’ financial picture. A financial review requires the auditor to make inquiries of management and perform analytical procedures to determine whether the financial statements conform with generally accepted accounting principles...Both an audit and a review require the auditor to determine, however, whether the financial statements prepared by management are consistent with generally accepted accounting principles.”<sup>8</sup>

The results of an audit versus the results of Lennon’s review by an independent auditor would not likely reach a different conclusion about the Company’s financial situation or its ability to be a good steward of USF support—either its traditional high-cost USF or RBE support in the future. To ignore the precedent set with the ETC Annual Report where Lennon’s reviewed financial statements are considered “satisfactory to the Commission” and deny Lennon RBE support by insisting that only “audited” financial statements are satisfactory is arbitrary and capricious and should be reversed immediately so that Lennon can proceed with the RBE filing requirements. Lennon filed its Letter of Credit commitment letter on February 3, and its ETC designation documentation is already secured and ready to be filed.

## **II. GOOD CAUSE EXISTS TO GRANT PETITIONERS’ REQUESTED WAIVER**

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<sup>8</sup> See *Connect America Fund*, et. al., WC Docket No. 10-90, et. al., Fifth Order on Reconsideration (rel. November 16, 2012) ¶ 10.

Pursuant to Section 1.3 of the Commission’s rules, Lennon respectfully requests waiver of the requirement to provide *audited* financial statements in order to receive RBE support, and remain under consideration for additional RBE support for qualified bids. In general, the FCC’s rules may be waived for good cause shown.<sup>9</sup> Waiver is appropriate where the “particular facts would make strict compliance inconsistent with the public interest.”<sup>10</sup> The FCC may grant a waiver of its rules where the requested relief would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>11</sup>

As stated above, Lennon’s consultants reached out to WCB staff to see if a waiver would be necessary, and WCB staff did not respond. As it was made clear in the January 30 Order, Lennon should have filed a waiver. Lennon respectfully submits this request for waiver of the requirement that RBE provisional winners provide *audited* financial statements, so that Lennon’s provisionally winning project can move forward with the next phases of the application and furthermore, so Lennon’s other projects can remain under consideration for the \$55 million that will be available due to so many other provisional winners not meeting the requirements or withdrawing from the experiments.

Good cause exists for grant of this waiver. Lennon is a small company and is not required to have its financial statements audited in the normal course of business. As explained above, its reviewed financial statements are satisfactory for the FCC, USAC, and the Michigan Public Service Commission. Lennon is also a participant in The National Exchange Carrier Association

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<sup>9</sup> 47 C.F.R. § 1.3.

<sup>10</sup> See *AT&T Wireless Services, Inc. et al. v. Federal Communications Commission*, No. 00-1304 (D.C. Cir. 2001), citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

<sup>11</sup> See generally, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); see also *Northeast Cellular* (D.C. Cir. 1990).

(“NECA”) pool, and audited financial statements are not required to satisfy NECA Pooling obligations. Lennon has also undergone a number of compliance audits in recent years with no significant findings.

At this point in time, it would not be feasible or prudent for Lennon to obtain audited financial statements solely for the purpose of securing RBE funds, when its previously submitted reviewed financial statements should be accepted. The significant cost and burden of obtaining an audit for this narrow purpose, when the reviewed financial statements are sufficient for Lennon’s multitude of other requirements that involve financial statements, is not something that the Commission should overlook when considering this request for waiver.

Furthermore, good cause exists because permitting Lennon to continue participating in the RBE is in the public interest. Lennon’s plans to deploy broadband to extremely high cost census blocks should not be stymied because of a minor difference in the type of financial report that Lennon and its auditors have been preparing for years versus an “audit” report. Lennon’s financial statements reviewed by an auditor provide a thorough and accurate depiction of the Company’s financial health, and an audit would reach the same exact conclusion. Lennon has been in business for over one hundred years; the Company is not a fly-by-night business by any means. The Company is very responsive and dedicated to the communications needs of its community. Lennon is a small business with only about fifteen employees, and the Company president has been working at Lennon since she was twelve years old. Accepting Lennon’s reviewed financial statements will facilitate broadband deployment in an unserved area, consistent with the goals of the RBE, USF, and the overwhelming cries by the FCC and the Obama administration to deploy advanced networks in a timely manner throughout the United States. If Lennon is denied the RBE support (which it obtained through a time and cost-intensive and complicated bidding process with

high uncertainty, and has met the requirements in all other regards), the FCC is essentially denying the remote residents an opportunity to have access to broadband in the census blocks that Lennon won—this could realistically be their *only* opportunity to get access to broadband for years to come.

In conclusion, Lennon respectfully requests the Commission reverse its decision to deny Lennon from receiving RBE support, grant the petition for waiver, and furthermore accept Lennon's reviewed financial statements so that Lennon can move forward with the filing requirements for the project it provisionally won and remain under consideration for additional RBE support.

Respectfully submitted,

/s/ Randy Fletcher

Randy Fletcher, General Manager

Lennon Telephone Company

Filed February 9, 2015