

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
_____	)	

**LEACO RURAL TELEPHONE COOPERATIVE, INC.  
SECOND AMENDMENT OF  
REQUEST FOR LIMITED WAIVER AND EXTENSION OF  
MOBILITY FUND PHASE I PUBLIC INTEREST OBLIGATIONS**

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November 24, 2015

## SUMMARY

Leaco hereby amends its Waiver Petition to request a further extension until March 15, 2016, to complete network construction and drive test reporting for two of the Waiver Tracts for which Leaco requested an extension of its initial MFI deadline. This request for a three-and-a-half month further extension is needed to complete cell site construction at two sites, which has been delayed for reasons beyond Leaco's control. The Bureau of Land Management took over ten months to approve construction of a new tower and cell site at one site, without any explanation for the unreasonable delay. A dispute between the tower owner and underlying landowner at another site has lingered without resolution, preventing Leaco from accessing the tower. Despite these delays, Leaco has aggressively searched for alternatives to complete the 3G network for its two largest MFI projects. Now Leaco has solutions to finish these projects in just a few additional months, which will bring mobile voice and broadband to subscribers and roamers in an area covering over 5,400 previously unserved road miles.

Leaco also is updating the Commission on the remaining four Waiver Tracts that were the subject of the initial Waiver Request. Leaco completed construction and submitted drive test data for one Waiver Tract on July 21, 2015, just a little over one month after the original MFI deadline. Leaco expects to complete two more of the Waiver Tracts by the initial requested extension date of December 5, 2015. Finally, Leaco will reimburse USAC for one Waiver Tract that it will not be able to complete as a result of insurmountable barriers.

Leaco requests that the Commission grant its Waiver Request, as amended herein, fulfilling its commitment to provide financial support to mobile voice and broadband providers that build the network that brings invaluable services to Americans in the most rural parts of this country.

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**LEACO RURAL TELEPHONE COOPERATIVE, INC.  
SECOND AMENDMENT OF  
REQUEST FOR LIMITED WAIVER AND EXTENSION OF  
MOBILITY FUND PHASE I PUBLIC INTEREST OBLIGATIONS**

Leaco Rural Telephone Cooperative, Inc. (“Leaco”) hereby further amends its Request For Limited Waiver And Extension of Mobility Fund Phase I Public Interest Obligations to request additional time, until March 15, 2016, to complete deployment and submit drive test data in the projects associated with Study Area Codes (“SACs”) 498006 and 498008,<sup>1</sup> and to provide an update on the projects in SACs 498002, 498007, and 498001 (“Further Amendment”).<sup>2</sup> These SACs are five of the six SACs (“Waiver Tracts”) for which Leaco requested that the Federal Communications Commission (“FCC” or “Commission”) grant a waiver and 180-day extension, until December 5, 2015, of the two-year deadline to construct a third generation (“3G”) network and submit drive test data reports for Mobility Fund Phase I (“MFI”) support.<sup>3</sup>

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<sup>1</sup> SAC 498006 corresponds to Census Tract 35015000700 (Eddy County) and SAC 498008 corresponds to Census Tract 35015000900 (Eddy County).

<sup>2</sup> SAC 498002 corresponds to Census Tract 35005001200 (Chaves County); SAC 498007 corresponds to Census Tract 35015000800 (Eddy County); and SAC 498001 corresponds to Census Tract 35005001102 (Chaves County).

<sup>3</sup> See Leaco Rural Telephone Cooperative, Inc. Request For Limited Waiver And Extension Of Mobility Fund Phase I Public Interest Obligations, *Connect America Fund, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90 and WT Docket No. 10-208

## Introduction

The goal of the Commission's MFI program is to bring mobile voice and broadband service to areas, specifically to unserved road miles, where such service does not already exist. That is an admirable and worthwhile goal, and Leaco supports it. However, when implementing an aggressive public policy program, such as expanding 3G voice and broadband coverage within two years to some of the most rural areas of the country, it is important to understand why these areas have remained unserved to date. Many areas have remained unserved not only because of the challenging economics and questionable financial return, but also because it is extremely difficult and time consuming to build networks in these areas. The greenfield portion of Leaco's MFI projects, which make up the Waiver Tracts that are the subject of the Waiver Request, demonstrate this in spades.

Bringing mobile voice and broadband to unserved areas of America may take longer than the Commission expected, but bringing these services to all Americans is important and worthwhile, even if deadlines must be extended to make that happen. Just this month, in one of the southeastern New Mexico locations where Leaco has recently expanded mobile voice and broadband under the MFI program, a Devon Energy employee working in the field had a medical emergency and was able to call 911 on a Leaco phone for assistance. A few months ago there would have been no wireless access to emergency services for this Devon Energy employee, or the cattle rancher out on his property, or a roaming driver passing through the area, without Leaco's commitment to build a 3G network with MFI support. Not only is there access to 911 services and other mobile voice services today, but there also is access to so much more with

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(filed Apr. 16, 2015) ("Waiver Request"). Leaco successfully reported broadband and voice coverage for eligible miles, meeting the minimum 75% coverage requirements, in SACs 498003, 498009, 498010, 498011, and 498012 prior to the June 8, 2015, two-year deadline.

broadband data, and all because Leaco committed to build a broadband network in some of the most rural parts of this country, where building a network requires tenacity and creativity. Leaco is continuing its work to complete its MFI commitment, helping the Commission meet its public policy goals.

### **Update Regarding Leaco's MFI Projects**

Since filing the Waiver Request, Leaco has continued to work diligently and persistently to complete network construction and drive test reporting of its MFI projects. On July 8, 2015, one month after the initial deadline, Leaco completed the network construction for SAC 498004, and on July 21, 2015, less than two weeks thereafter, submitted the Payment 3 Form 690 to the Universal Service Administrative Company ("USAC"), reporting 3G broadband and voice coverage for 85% of eligible unserved roads.<sup>4</sup> Leaco expects to complete the projects associated with SACs 498007 and 498002 by the requested December 5, 2015, extension date.

Due to excessive delays in obtaining required approvals and leases from the Bureau of Land Management ("BLM"), and due to a dispute beyond Leaco's control between a tower owner and land owner, however, Leaco will not be able to complete construction and drive testing of SACs 498006 and 498008 by December 5, 2015, and hereby seeks a further extension, until March 15, 2016, in which to complete the projects.

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<sup>4</sup> See Letter from Gregory W. Whiteaker and Robin E. Tuttle, Counsel for Leaco Rural Telephone Cooperative, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, regarding Amendment to Leaco Rural Telephone Cooperative, Inc. Request For Limited Waiver And Extension Of Mobility Fund Phase I Public Interest Obligations, WC Docket No. 10-90 and WT Docket No. 10-208 (filed July 31, 2015) ("Waiver Amendment") (amending the Leaco Waiver Request to report completion of construction and drive testing for SAC 498004, Census Tract 35005001400, Chaves County, and to request final disbursement of MFI funding for that SAC). Leaco reiterates its request that the Commission act expeditiously on the Waiver Request with regard to SAC 498004, and grant the request and direct USAC to proceed with the MFI validation and disbursement process.

Leaco will not be completing network construction for SAC 498001, and will repay the MFI funds already disbursed plus the required default penalty. The owner of a tower at one of the sites needed to complete network construction of SAC 498001 has not been able to modify its tower in a timely manner for Leaco to complete this MFI project due to the presence of a protected species of bird. Leaco will notify USAC about SAC 498001, and no longer requests and extension of time to complete this MFI project.<sup>5</sup>

**I. Leaco's Network Construction Has Been Further Delayed at Two Sites By Causes Beyond Its Control, Necessitating Additional Time To Complete.**

Leaco hereby amends its Waiver Request to request a further extension until March 15, 2016, to complete construction and submission of drive test data for the MFI projects associated with SACs 498006 and 498008. Despite Leaco's aggressive efforts, problems beyond its control at two critical sites, Illinois Camp and White City, have continued to delay Leaco's network construction. The BLM site approval and lease process has unreasonably delayed Leaco's construction of a new tower and cell site at Illinois Camp and a third-party dispute between the land owner and the tower owner at White City has prevented Leaco from gaining access to that tower for cell site construction there.

**A. Excessive and Unanticipated Delays in Receiving BLM Approvals Delayed Leaco's Construction of the Illinois Camp Site.**

In its Waiver Request, Leaco explained that four of the 14 sites needed for its MFI network were on land owned by the BLM. As documented in the Waiver Request, BLM delays in issuing necessary approvals and leases for all four of these sites delayed Leaco's completion of three of the six MFI projects for which the waiver was requested, but the excessive delay in

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<sup>5</sup> On June 4, 2015, Leaco also notified USAC that it would not complete network construction for SAC 498005, Census Tract 35015000401, Eddy County, and Leaco returned all MFI funds disbursed for that SAC, as well as paid the required default penalty.

granting approval and a lease for the Illinois Camp site has further necessitated this request for a further extension for performance in the projects associated with SAC 498006 and 498008. Specifically, Leaco and the tower company did not receive approval from the BLM for the Illinois Camp site, the last of the four BLM sites, until October 27, 2015, more than 12 months after Leaco initiated the process for approval from the BLM. In light of this excessive and unjustified delay, Leaco requires a further extension of the performance deadline.

In September 2014, Tower Ventures, the tower company that Leaco engaged to construct the tower at the Illinois Camp site, initiated discussion with the BLM about the tower siting. On December 6, 2014, Tower Ventures submitted its initial application to the BLM for approval of the site and tower construction. After requesting information on the status of the application, Leaco learned on January 7, 2015, that the BLM had lost the Illinois Camp application. Tower Ventures, however, expediently re-submitted the application on that same day. Yet, the application languished for another nine months, subject to further unexplained and inefficient processing by the BLM. Tower Ventures also had understood from the BLM that the cell site that Leaco would be constructing on the tower would be covered by the application that Tower Ventures submitted for approval, but Leaco unexpectedly received notice from the BLM on March 31, 2015, that Leaco also had to submit a separate application for approval of the cell site. Leaco expediently submitted an application for the cell site construction that same day.

The expected timeframe for BLM approval of a site with a new tower construction is typically six to eight weeks. In the instant case, however, despite the lack of any requirements for substantive revisions to the site, it took the BLM ten and one half months after Tower Ventures submitted the first application before the BLM approved the application for construction. The BLM's lengthy and unclear approval processes have delayed Leaco's tower

and cell site construction by more than eight months. Inefficiencies of federal agencies have been recognized in Congress as an impediment to building mobile broadband infrastructure, and Leaco should not be penalized for not meeting its MFI deadline when the BLM was the primary factor causing Leaco to miss such deadline.<sup>6</sup>

As a backhaul site for the cell sites in the MFI projects in the two Census Tracts associated with SACs 498006 and 498008, the Illinois Camp site is of critical importance. Specifically, the other sites that make up the network for these two MFI projects drain into the Illinois Camp site for access to the Internet. Accordingly, Leaco cannot complete the MFI projects in either of these SACs without construction of the Illinois Camp site.

Importantly too, with much of the land in this part of New Mexico being under the control of federal and state agencies, such as the BLM, there are only a limited number of locations where any provider of mobile voice and broadband services could negotiate a commercial land lease to construct necessary towers and cell sites to bring mobile broadband services to unserved areas. Quite simply, building wireless networks in the American southwest requires access to government land. Essentially, Leaco and the American public are at the mercy of government agencies that control access to land that is critical for the deployment of wireless network sites. If companies like Leaco cannot obtain reasonable access to such government controlled land that is necessary for building a government-funded mobile broadband network, and if these companies subsequently lose the federal funding that makes mobile broadband networks possible as a result of government inefficiencies, it is the American public that suffers, and the Commission will fail to achieve its goal of expanding mobile broadband across America.

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<sup>6</sup> In a Senate Commerce Committee meeting on October 8, 2015, Senator Tom Udall (R., NM) sought input from witnesses on how to streamline broadband deployment on federal lands when that deployment requires approvals and permits from federal agencies such as the BLM. See [https://www.youtube.com/watch?v=Z40jEbOQ\\_zI&feature=youtu.be](https://www.youtube.com/watch?v=Z40jEbOQ_zI&feature=youtu.be).

The delays that Leaco endured from the BLM inefficiencies and untimely siting approval are beyond Leaco's control and were not reasonably foreseeable. Yet, Leaco did not remain idle while it was waiting for the BLM approval of the Illinois Camp site. While pressing the BLM for prompt action, which included engaging the New Mexico Congressional delegation to facilitate prompt action, Leaco continued to explore other siting options because it knew that as more time passed without approval from the BLM it was at risk of not meeting its requested extension of December 5, 2015. Until November 2015, there simply were no other viable options.

Importantly, obtaining approval from the BLM is merely the first step in completing network construction at the critically important Illinois Camp site. Because this site requires a new tower build, inherently it requires more time to complete. Moreover, while Leaco would expect Tower Ventures to construct a new tower at the Illinois Camp site as expeditiously as it did at the Hagerman Cutoff site,<sup>7</sup> the timing of the BLM approval, once finally given, has decidedly altered Tower Venture's ability to construct the Illinois Camp tower quickly, as well as Leaco's own ability to construct its cell site there quickly. Because Leaco did not receive approval from the BLM until late October 2015, Leaco would be beginning construction at the worst possible time of the year. The normal weather conditions in this part of New Mexico during the three months<sup>8</sup> following the BLM approval (November, December, and January) include high winds and ice, which are known to cause delays with cranes working on and accessing towers, as well as with workers climbing towers. In addition to these normal weather

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<sup>7</sup> Tower Ventures' quick construction of the tower at Hagerman Cutoff was an important factor in Leaco being able to complete construction of the Census Tract associated with SAC 498004 just one month after its MFI deadline.

<sup>8</sup> Tower Ventures and Leaco had planned aggressively to construct the tower and cell site at Illinois Camp within a three-month timeframe following BLM approval of the site.

conditions for this part of New Mexico during winter months, Leaco is expecting that the El Nino storms this season will further negatively impact construction days as the storms are predicted to be some of the strongest in many years.

Leaco is committed to completing its MFI projects as quickly as possible, but beginning tower and cell site construction in November given the normal and expected weather conditions would extend the construction time beyond what Leaco planned, making the completion of these projects a seven and a half month effort (by June 15, 2016) instead of a four and a half month effort (by March 15, 2016) from the date of the BLM approval. While weather is a known factor that must be accounted for and accommodated in a timeline for constructing a new tower and cell site, in this instance it has become a factor for which Leaco could not plan around because of the situation in which the BLM put Leaco with their unreasonable delays in processing and approving the Illinois Camp site. As a result of the extended delays caused by the BLM, Leaco was put in the position of needing to start tower construction as soon as approval was granted, and that would mean starting construction at the worst possible time of the year, when delays due to weather must be expected.

Shortly after Tower Ventures and Leaco obtained BLM approval for the Illinois Camp site, Tower Ventures was able to negotiate a lease with a private landowner near the Illinois Camp site.<sup>9</sup> This landowner had been unwilling previously to lease his land to Tower Ventures and grant an easement to Leaco, but in the year since those last discussions the landowner changed his mind. Knowing that the construction of a new tower and cell site on the BLM land

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<sup>9</sup> The private landowner site is less than two miles from the BLM land on which Tower Ventures had planned to construct a build-to-suit tower for Leaco. There is no change to the expected coverage for the Cell On Wheels (“COW”) that will be placed on the land being privately leased due to the close proximity and similar geography of the new site to the tower that would have been built on the BLM site.

would take several months beyond what Leaco had planned,<sup>10</sup> Tower Ventures promptly signed a lease with the private landowner in November 2015, and Leaco simultaneously obtained an easement to access the tower to be constructed on the leased land. With a lease and easement in place, Tower Ventures will be able to place a COW on the private landowner site by the end of December 2015, and Leaco will be able to complete Phase 3 work for turning up the cell site within six weeks thereafter. This arrangement will allow Leaco to stay on schedule with the original timeframe it had allotted for constructing a new tower and cell site after it received BLM approval. While weather will still impact siting of the COW and turn up of the network, the impact on time for this site to be operational will be significantly less than it would be for constructing a new tower and cell site during winter months. Moving forward in this way does result in additional, unplanned expenses because ultimately the COW will be replaced with a newly constructed tower, but Leaco made a business decision to continue moving forward with its commitment to complete its MFI obligations as expeditiously as possible.<sup>11</sup>

Following cell site construction at the new Illinois Camp site, Leaco must complete the Phase 3 work for these two MFI projects, specifically network turn-on, network testing, network optimization, and back-office integration, as well as drive tests of these two projects. The Census Tracts associated with SACs 498006 and 498008 are the two largest Census Tracts for which Leaco was awarded MFI funding. Notably, SAC 498006 covers 2,612 unserved road

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<sup>10</sup> The applications to the BLM were for construction of a new tower and a cell site on that new tower. While the overall construction time could be shortened with the use of a COW as a temporary measure until a new tower could be constructed, the addition of a COW on the BLM site would have required further BLM approval and it was clear that additional BLM approval would be completely unfeasible for completing the MFI projects in a reasonable amount of time.

<sup>11</sup> Importantly, Leaco has continued to expend capital and proceed with network construction, building cell sites at Hope, Lakewood, Indian Basin, and Queen, which are all necessary for the MFI projects associated with SACs 498006 and 498008, and which will all drain into the Illinois Camp site. Similarly, Leaco has continued to seek a solution for the cell site at White City, which also drains into the Illinois Camp site.

miles and SAC 498008 covers 2,801 unserved road miles.<sup>12</sup> Indeed, the total number of unserved road miles for these two SACs amounts to almost one half of all the unserved road miles for all 12 of the Census Tracts for which Leaco was awarded MFI funding.<sup>13</sup> Leaco, however, expects to complete the Phase 3 work and drive testing for these two SACs, to process the drive test results, and to submit the Form 690 by March 15, 2016.

**B. A Dispute between the Landowner and Tower Owner Beyond Leaco's Control Delayed Leaco's Construction of the White City Site.**

A dispute between the landowner and tower owner of the existing White City tower, which was beyond Leaco's control, also delayed Leaco's completion of the MFI project associated with SAC 498006. When Leaco filed its Waiver Request, it reported that the White City site was one of six sites with an existing tower, for which Leaco was waiting on the issuance of a Notice To Proceed ("NTP") from American Tower before Leaco could proceed with cell site construction and network integration. Despite a verbal agreement with American Tower providing Leaco with access to that site, Leaco has never received a signed lease agreement because of an ongoing dispute between American Tower and the landowner. As a result of this dispute, the landowner has refused to allow Leaco to access the site for the past 12 months. Leaco was led to believe that the dispute between the landowner and American Tower would be resolved quickly so that Leaco could proceed with cell site construction.

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<sup>12</sup> To date, the largest census tract that Leaco has constructed and drive tested was 1,098 unserved road miles. Leaco anticipates that it will be completing network construction and drive testing for SAC 498002, which will be the next largest census tract to be completed with 1,816 unserved miles, by December 5, 2015.

<sup>13</sup> Leaco's MFI award covered 11,281 unserved road miles, and there is a total of 5,413 unserved road miles in the projects associated with SACs 489006 and 498008.

Unfortunately, to date there has been no such resolution, and without access to the site, Leaco has been unable to proceed with cell site construction at the White City tower.<sup>14</sup>

Leaco, however, did not rely on a resolution of American Tower's dispute with the landowner at the White City site as Leaco's only solution for a location to construct a cell site. Having a cell site at White City is a critical part of the wireless network, because without a site at White City, Leaco would not be able to meet its MFI obligation to provide a minimum of 75% coverage of the unserved road miles in SAC 498006. Accordingly, Leaco also continued to explore alternative locations in White City where it could construct a cell site while American Tower continued to try to resolve its dispute with the landowner.

Up until mid-October 2015, there were no suitable alternatives for a site that would allow Leaco to meet its coverage requirements for SAC 498006.<sup>15</sup> Within the past few weeks, Leaco has been able to negotiate access to a Crown Castle tower in White City, but the tower will require \$60,000 in structural modifications. In order to gain expedient access to the Crown Castle tower, Leaco has agreed to pay for these modifications, going well beyond its planned budget for this MFI project.

Crown Castle's tower in White City is also located on land owned by the same person who owns the land where American Tower's tower is located. Fortunately, Crown Castle is not engaged in a dispute with the landowner. Similar to the fact that large tracts of land in New Mexico are under the control of federal or state government agencies, large tracts of land in New

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<sup>14</sup> Not willing to give up, Leaco even tried to negotiate an arrangement whereby American Tower would construct the cell site and lease it to Leaco, but American Tower did not believe that it could do that given the nature of the ongoing dispute with the landowner.

<sup>15</sup> Leaco located one site in White City that was potentially feasible, but the site was in a valley (zoning laws in that area prohibit building on a nearby hill) and in order for the cell site to provide adequate coverage, the tower would have needed to be 400 feet high as a result of being in the valley. However, local zoning laws do not permit a tower above 200 feet. This site option evaporated.

Mexico also are owned by individuals and these individuals can wield a significant amount of control over access to their land for tower siting and tenant access to such towers. In the American southwest, expanding mobile broadband is not a simple matter of negotiating among a myriad of landowners and tower owners for the best deal. Rather, it often requires a mobile broadband provider to make whatever deal it can with a landowner or tower owner, subject to the whims of those owners, whether a private or government owner, recognizing that failure to reach a deal could mean that mobile broadband may not be possible in certain areas because there are no other land or tower options.<sup>16</sup> If the Commission's goal is to expand mobile broadband across America, mobile broadband providers must be afforded reasonable leniency in project deadlines to account for their unique difficulties in obtaining sites to build and access the towers that are necessary to construct a mobile broadband network.

Leaco expects to be able to begin construction of its cell site on the Crown Castle tower in White City in mid December 2015. Leaco expects to complete cell site construction and Phase 3 work for the White City site around the same time that work is completed for the Illinois Camp site so that drive testing for SACs 498006 and 498008 can be completed and drive test

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<sup>16</sup> Importantly, with Leaco's move to the Crown Castle tower, there will be a change in the mobile voice and broadband coverage that Leaco can expect to achieve due to the different height of the Crown Castle tower. The change in expected coverage is significant enough that it would cause Leaco to not meet the MFI requirement for a minimum of 75% coverage of unserved road miles. In order to rectify this expected reduction in coverage, Leaco searched for other locations where it could add a cell site to extend coverage. The only viable option was at an existing Leaco-owned tower in Ballard, but a tower for which Leaco no longer had access to as a result of a lease that had expired and was not renewed due to a dispute between the landowner and former Leaco management.

Historically, the landowner had been unwilling to communicate or negotiate with Leaco as a result of the dissolution of the previous relationship. It was only through a series of impromptu personal face-to-face meetings at Ballard Ranch that Leaco was able to reach a new agreement with the rancher and will now be able to add a cell site to its own tower in Ballard by the requested extension date of March 15, 2016. Gaining access to the Ballard tower adds unplanned costs, but Leaco is willing to incur the costs to expand its coverage in order to meet its MFI commitments.

data can be submitted by March 15, 2016. Importantly, however, the completion of the cell sites at White City on the Crown Castle tower and at Ballard on the existing Leaco tower will not alone provide the required mobile broadband coverage for SAC 498006. Completion of this MFI project still depends on completion of the Illinois Camp site, which is the Internet drain for all sites in the MFI projects associated with SACs 498006 and 496008.

**II. Grant of the Requested Limited Waiver and Extension of Time Is Warranted and Would Serve the Public Interest.**

There is good cause to grant the Waiver Request, as amended. Leaco has demonstrated diligent and persistent efforts to complete construction of its 3G network in the Waiver Tracts: completing one SAC within a short period of time after the Waiver Request was filed; reporting that it expects to complete two SACs by the requested December 5, 2015, extension date; explaining the problems it has encountered and that have been beyond its control for the two SACs that are the subject of this Further Amendment; and notifying the Commission that it has reported a final SAC for which it cannot complete network construction and for which it will return initial MFI funding and associated default penalties. As stated in its Waiver Request, Leaco's work on the MFI projects has been well underway since October 2012, and Leaco has pursued an aggressive schedule to complete network construction in the Waiver Tracts as quickly as possible. Leaco has been tenacious in overcoming obstacles and setbacks, and is committed to completing the remaining MFI projects as quickly as possible. Grant of the further extension until March 15, 2016, as requested for the two SACs in this Further Amendment will provide Leaco with a reasonable and brief amount of time to complete the two largest of its MFI projects, providing a significant benefit to consumers and roamers in New Mexico, and serving the public interest.

**A. Special Circumstances Warrant Deviation from the Commission's Rules.**

Pursuant to Section 1.3 of its rules, the Commission may waive any provision of the rules for good cause or where, due to special circumstances, deviation from a rule would better serve the public interest and the Commission's purposes than strict enforcement of the rule.<sup>17</sup> The Commission also may take into account considerations of hardship, among other factors, when determining whether to grant a waiver.<sup>18</sup> The delays Leaco has encountered in constructing the 3G network for SACs 498006 and 498008 constitute special circumstances because they were caused almost exclusively by circumstances outside of Leaco's control. Even though Leaco tried to speed up its access to the Illinois Camp site by engaging the New Mexico Congressional delegation to communicate to the BLM Leaco's dire need for immediate access to the BLM land, as well as trying to speed up its access to the White City site by trying to negotiate a lease for a cell site built by American Tower on its tower, none of these efforts resulted in a timely solution for completing the network. As Leaco has explained, land and tower options for other sites were limited, if not almost non-existent, but while Leaco continued to wait for the BLM approval at Illinois Camp and for resolution of the dispute between American Tower and the White City landowner, Leaco continued to explore other site options. There were none for the Illinois Camp site and Leaco simply had to wait for BLM approval to move forward with the tower and cell site construction. Subsequent to the BLM approval, Tower Ventures was able to negotiate a lease with private landowner. For the White City site there was one option that came with a

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<sup>17</sup> See 47 C.F.R. § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972)).

<sup>18</sup> *Wait Radio v. FCC*, 418 F.2d at 1159.

significant price tag, but Leaco accepted the condition for access to the Crown Castle tower, and negotiated a new lease for access to the Ballard tower, in order to meet its MFI commitments.

**B. Good Cause Exists for Grant of the Amended Request for a Limited Waiver and Extension of Time.**

There is good cause to grant the Waiver Request, as amended, to provide additional time to complete the MFI projects associated with SACs 498006 and 498008. The Commission's goal for the MFI auction was to "expand current and next generation mobile services to areas without such services today."<sup>19</sup> In setting a two-year deadline for winning bidders constructing 3G networks, the Commission was clear that it wanted to expand mobile broadband service quickly. Setting deadlines is an appropriate method for ensuring good use of public funds, but insisting on compliance with those deadlines may result in a waste of public funds if the circumstances for missing the deadline are not adequately considered and if the progress toward meeting the Commission's mobile broadband goals is not adequately weighed.

Leaco originally requested a 180-day extension to complete six of the 12 census tracts for which it was a winning bidder. These six tracts all required building a new network to bring mobile broadband where it does not exist. This is a significant feat in southeastern New Mexico. A combination of business setbacks and circumstances beyond its control necessitated that Leaco request the 180-day extension, but Leaco has used this time wisely and efficiently toward completing as many of those six tracts as possible. While Leaco will relinquish MFI funding for

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<sup>19</sup> *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 at ¶ 359 (2011) (“*USF/ICC Transformation Order*”).

one of those tracts, it has already met its requested December 5, 2015 deadline for one of the six tracts, and it expects to meet its requested December 5, 2015 deadline for two other tracts. Despite diligent and persistent efforts to complete construction of its network for the two remaining tracts by the requested extension date, circumstances beyond Leaco's control continued to obstruct Leaco's ability to complete the remaining two Waiver Tracts. With solutions now in place for completing the network in SACs 498006 and 498008, however, Leaco needs a brief additional three and a half months to bring mobile broadband to over 5,400 unserved road miles.

Granting the requested relief for an amended extension of the MFI deadline until March 15, 2016, for these two largest SACs is in the public interest. Within a few months, the completion of Leaco's 3G network in SACs 498006 and 498008 will provide subscribers and roamers with mobile voice and data services that have not been available in these areas.<sup>20</sup> The public will not be harmed by a brief, further extension of the construction deadline until March 15, 2016, for these two SACs, but the public will be harmed by not granting this extension. There are no other providers willing to build a mobile broadband network and serve these areas in southeastern New Mexico. As demonstrated, herein, there is good cause for the Commission to grant an amendment to the request for a limited waiver and extension of the two-year construction and reporting deadline for SACs 498006 and 498008.

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<sup>20</sup> Importantly too, SACs 498006 and 498008, like the other SACs included in the Waiver request, cover road miles on land where there is important oil and gas production and cattle and dairy industries. Leaco's new 3G network will support this vital petroleum exploration and extraction industry, thereby providing critical public safety and national security benefits.

**C. Strict Compliance Is Contrary to the Public Interest and Would Cause Undue Hardship.**

Leaco has continued to build and will complete the 3G network in SACs 498006 and 498008 at significant financial cost without knowing whether the Commission will grant Leaco the requested extensions. However, if the Waiver Request and Further Amendment are not granted, Leaco will not receive the disbursement of the remaining MFI support it was awarded and it will be required to pay back the initial MFI disbursement it received with a penalty. Those financial losses would be critical and devastating to Leaco's ability to operate not only the new 3G network it will have built, but also to its ability to operate its existing landline operations. The public interest concern is that New Mexico consumers will lose service they had or almost had and the broader public suffers too when subscribers and roamers do not have access to voice and broadband services. These results would be contrary to the public interest.

Strict enforcement of the Commission's MFI rules would not only mean that mobile voice and broadband will not be available in areas covered by Leaco's winning bids despite a network having been built, but it will also mean that the MFI program has failed to meet its goals. An indirect result will be the damage inflicted on the southeastern New Mexico economy by the voice and broadband networks that will not be operated. The Commission will have met its MFI broadband goals successfully when MFI winners complete their projects and there are viable providers of mobile voice and broadband services over these networks.

**III. Conclusion**

Leaco has worked diligently to meet the requested extension date for construction and drive test reporting of its MFI Waiver Tracts. However, no amount of diligence on Leaco's part could compel a federal agency to act in a reasonable and timely manner. Similarly, Leaco could not resolve a dispute between a landowner and tower owner to gain access to a tower. Leaco had

limited, or no, alternatives in these situations. Problems beyond Leaco's control will prevent Leaco from meeting its requested December 5, 2015, extension for SACs 498006 and 498008. Now that Leaco has a solution for the two sites that are necessary for sufficient coverage of SACs 498006 and 498008, Leaco is confident that with continued diligent efforts it can complete network construction and drive testing for these SACs by March 15, 2016, just a few months longer than its original extension request. The public interest will be served by Leaco's deployment and operation of a mobile broadband network in previously unserved areas of southeastern New Mexico. For the reasons set forth above, Leaco respectfully requests that the Commission extend the deadline until March 15, 2016, for Leaco to complete construction and submit drive test data for Waiver Tracts T35015000700 and T35015000900. Leaco requests expeditious Commission action on this request.

Respectfully submitted,



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*Counsel for  
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November 24, 2015

## DECLARATION OF SID APPLIN

I, Sid Applin, do hereby declare under penalty of perjury that the foregoing is true and correct:

1. I am the Chief Executive Officer of Leaco Rural Telephone Cooperative, Inc.
2. I have read the foregoing "Second Amendment of Request for Limited Waiver and Extension of Mobility Phase I Public Interest Obligations." I have personal knowledge of the facts set forth therein, and believe them to be true and correct.



Sid Applin  
Chief Executive Officer  
Leaco Rural Telephone Cooperative, Inc.  
Dated: 11-24-2015