

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

RURAL BROADBAND EXPERIMENTS) Docket Nos. 10-90, 14-259

**COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION
ON WAIVER PETITIONS OF PROVISIONALLY SELECTED BIDDERS**

TO THE COMMISSION:

NTCA–The Rural Broadband Association (NTCA) hereby submits comments on Waiver Petitions of Provisionally Selected Bidders for Rural Broadband Experiment funding.¹ NTCA urges the Commission to include in its review of waiver requests a greater level of in-depth consideration as to whether the reasons underlying the requested relief from financial reporting obligations bear upon the ultimate ability and fitness of the respective provisionally selected bidders to provide the proposed services. While it may one thing for smaller or relatively newer firms to not have audited financials, for example, in the ordinary course of business, it could be another thing altogether where such firms also have little or no track record of demonstrated performance over a sustained period of time (*i.e.*, more than a few years) in the task of building *and* operating robust networks *and* delivering services in high-cost, rural areas. Thus, more careful review is needed of the true capabilities of those seeking waivers to deliver on the promise of rural broadband.

The Commission set forth clear standard requirements for firms seeking Rural Broadband Experiment funding. These requirements are intended to ensure that public monies are distributed to entities fully capable and worthy of accepting that funding and utilizing it in the manner intended by the Commission to further broadband deployment throughout the Nation. As part of this application review

¹ Public Notice, *Wireline Competition Bureau Announces Availability of Additional Funding for Rural Broadband Experiments; Seeks Comment on Waiver Petitions of Provisionally Selected Bidders*: Docket Nos. 10-90, 14-259, DA 14-1889 (Dec. 23, 2014).

process, the Commission mandated that applicants must provide three consecutive years of financial statements. The Commission, however, also recognized the certain entities might not be positioned to provide this information. Therefore, the Commission allowed

[i]f a winning bidder is unable to produce three consecutive years of financial statements, it should 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.²

NTCA does not comment in this filing upon the case-by-case merits of any waiver application (and certainly not, by extension, the merits of any overall application for Rural Broadband Experiment funding). Rather, NTCA offers a general observation that there may be varying reasons underlying the applications for waiver, and suggests that Commission's evaluation of the waiver petitions should be informed by an individualized, plain and logical positioning of the stated reasons for relief against the import of the grants the applicants seek to obtain, the work they ostensibly commit to undertake, and the applicants' prior track record of success in delivering sustainable, robust, advanced communications services in hard-to-serve rural communities.³

To be sure, the waivers in question emanate mainly from newly or recently formed entities. Therefore, while relief from financial reporting obligations may be consistent with the reality of their respective positions (*e.g.*, a firm founded in 2014 cannot provide financials from 2013 or earlier), the respective financial credentials must be considered as part of the overall assessment of ability of the firms to meet all of the Rural Broadband Experiment obligations and, more broadly, the mission and mandate of universal service. Here again, it is important to note federal law views universal service not just as a one-

² Rural Broadband Experiments – Frequently Asked Questions (FAQs) at 6, *available at* http://transition.fcc.gov/wcb/FAQs_Rural_Broadband_Experiments.pdf (last viewed Dec. 31, 2014, at 10:54).

³ Such a track record requires more than merely substituting the general professional or technical capabilities of management for audited financials showing the operations of the firm over the past several years. Instead, grant of any waiver should turn upon a much more specific showing that the applicant or its management is actually familiar with the area it intends to serve, that the applicant or its management has operated in or near that area (or in areas like it) for a sustained period in the past in connection with other efforts, and that the applicant or its management has in fact had the experience of delivering quality, reasonably affordable services to consumers in such areas over a longer period of time than just a year or two.

time event – the act of “getting networks there” – but rather as a sustainable, ongoing set of events, in which consumers can receive and continue to enjoy the benefits of reasonably comparable services at reasonably comparable rates. This requires more of a track record than mere success in network construction alone, and in rural areas, it presents entirely different challenges altogether, of course.

Finally, while NTCA recognizes that certain chronological or operational realities may obstruct compliance with *financial* reporting requirements, waivers from *technical, deployment or other service-related* obligations should not be issued on the basis of recent market entry or other condition related to an applicant’s lack of experience. The Rural Broadband Experiment funding should support robust deployment of additional broadband connections and therefore demands its implementation by those fully fit to do so based upon a demonstrated, sustained, longer-term track record (at least by the management of the firm) of network deployment, network operation, and service delivery to consumers in high-cost, rural areas. Federal universal service policy should demand no less than such a more specific showing of relevant experience.

WHEREFORE the reasons stated above, NTCA urges the Commission to consider whether the reasons underlying the requested relief from financial reporting obligations bear upon the ultimate ability and fitness of the respective provisionally selected bidders to deploy the proposed networks *and* provide the required voice and broadband services on a sustainable basis.

Respectfully submitted,

**NTCA–THE RURAL BROADBAND
ASSOCIATION**

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