

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

Adopted: March 3, 2015

Released: March 3, 2015

By the Deputy Chief, Wireline Competition Bureau:

ORDER

1. In this Order, the Wireline Competition Bureau (Bureau) denies petitions filed by Computer 5, Inc. d/b/a LocalTel Communications; Donnell, Michael D. (d/b/a San Joaquin Broadband); Tejas Wireless LLC; and Texhoma Fiber, LLC for a waiver of the requirements established by the Commission to remain under consideration as a “next-in-line” bidder for rural broadband experiment support.¹ We do not find good cause to waive the requirements established by the Commission and therefore remove these entities from further consideration for rural broadband experiments support. We also remove two additional entities—Liberty Cablevision of Puerto Rico (Liberty) and BVU Authority (BVU)—from further consideration for rural broadband experiments support for failing to file the requisite technical information by the Commission’s required deadline.

I. BACKGROUND

2. In the *December 2014 Connect America Fund Order*, the Commission established a process to enable the provisional selection of additional bidders for rural broadband experiments support in the event any of the initial provisionally selected bidders defaulted before the Bureau finalized the list of census blocks that will be offered to the price cap carriers for Phase II of the Connect America Fund.² Consistent with the requirements established for provisionally selected bidders, the Commission required all bidders interested in being considered for any newly available support to file, by Tuesday, January 6, 2015, their most recent three consecutive years of audited financial statements, including balance sheets, net income, and cash flow, as well as a description of the technology and system design that would be used to deliver voice and broadband service meeting the requisite speeds to all locations in the funded census blocks, including a network diagram certified by a professional engineer.³ On February 3, 2015,

¹ See Petition for Waiver of Computer 5, Inc. d/b/a LocalTel Communications, WC Docket Nos. 10-90, 14-259 (filed Jan. 6, 2015); Petition for Waiver of Texhoma Fiber, WC Docket No. 14-259 (filed Jan. 5, 2015). See also *Wireline Competition Bureau Announces Entities under Consideration as Next-in-line Bidders for Rural Broadband Experiments Support*, WC Docket Nos. 10-90, 14-259, Public Notice, DA 15-157 (Wireline Comp. Bur. rel. Feb. 3, 2015) (*Next-in-Line Bidders Public Notice*).

² See *Connect America Fund; ETC Annual Reports and Certifications; Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*, WC Docket Nos. 10-90, 14-58, 14-192, Report and Order, 29 FCC Rcd 15644, 15674-75, para. 83 (2014) (*December 2014 Connect America Fund Order*).

the Wireline Competition Bureau (Bureau) announced that 48 entities had submitted the proper information required by the Commission in the *December 2014 Connect America Fund Order*.⁴

II. DISCUSSION

3. Consistent with the Commission's direction in the *December 2014 Connect America Fund Order* not to delay the offer of support and the Bureau's prior decision not to grant waivers filed by provisionally selected rural broadband experiments bidders, we deny the requested waivers. As we previously concluded, we determine that the standards for waiver have not been met here.⁵ Strict enforcement of the deadlines and filing requirements adopted by the Commission for next-in-line bidders is appropriate given the accelerated time frame for the rural broadband experiments and our intention to finalize the offer of support to be made to price cap carriers in the near future.⁶

4. As we previously stated, we are mindful of our duty as stewards of public funding.⁷ We therefore must ensure that the finite rural broadband experiments budget is distributed to entities that provide concrete evidence of their financial and technical capability to fulfill their commitment not only to build voice and broadband capable networks, but also to provide reasonably comparable services at reasonably comparable rates.

5. Finally, we remove Liberty and BVU from further consideration for rural broadband experiments funding due to their failure to submit network diagrams certified by a professional engineer by the required January 6th deadline. The purpose of having an entity's network diagrams certified by a professional engineer was to have an educated engineer verify that the entity's proposed network would be able to fulfill the service obligations to which it had committed. Again, we conclude that strict adherence to the deadlines adopted by the Commission for these rural broadband experiments would better serve the public interest.

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³ See *Wireline Competition Bureau Announces Deadline for Bidders Interested in Remaining under Consideration for Rural Broadband Experiments Support to File Additional Information*, WC Docket Nos. 10-90, 14-259, Public Notice, 29 FCC Rcd 15132 (Wireline Comp. Bur. 2014).

⁴ See *Next-in-Line Bidders Public Notice* at 2-3.

⁵ See *Connect America Fund; Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-259, Order, DA 15-139 (Wireline Comp. Bur. rel. Jan 30, 2015) (*Rural Broadband Experiments Waiver Order*). See also 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166. "[D]eadlines can only be waived under 'unusual or compelling circumstances.'" *NetworkIP, LLC v. FCC*, 548 F.3d 116, 126 (D.C. Cir. 2008) (citation omitted).

⁶ We note that the Commission has strictly enforced filing deadlines in other contexts. See, e.g., *Vanessa Cintron, Noble Ventures, Inc., On Request for Inspection of Records*, FOIA Control No. 2014-282, Memorandum Opinion and Order (2014) (dismissing an application for review that was filed three days late and noting "[w]hile losing the right of appeal when a deadline is missed by a brief time 'may seem unduly harsh . . . short of exceptional circumstances (which are not present here), courts have generally respected statutory and regulatory deadlines"); *Totally Jesus Network, Inc. Application for a New NCE FM Station at Gold Beach, Oregon, et al.*, File No. BNPED-20071018AON, Memorandum Opinion and Order, 29 FCC Rcd 6414 (2014) (affirming a decision to dismiss an application for a new noncommercial FM station after the applicant experienced technical difficulties and filed nine days past the filing deadline).

⁷ *Rural Broadband Experiments Waiver Order* at para. 6.

III. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

7. IT IS FURTHER ORDERED that the petitions for waiver of the rural broadband experiments financial review requirements, which requires provisionally selected bidders to provide the most recent three consecutive years of audited financial statements, filed by filed by Computer5, Inc. d/b/a LocalTel Communications; Donnell, Michael D. (d/b/a San Joaquin Broadband); Tejas Wireless LLC; and Texhoma Fiber, LLC, ARE DENIED as described herein.

8. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol Matthey
Deputy Bureau Chief
Wireline Competition Bureau