

**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

ORDER

Adopted: June 15, 2015

Released: June 15, 2015

By the Deputy Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) takes several actions relating to the Connect America rural broadband experiments. First, we deny a request for extension of time to obtain a commitment letter for a Letter of Credit (LOC). Second, we dismiss as moot two petitions for waivers or extensions of deadlines relating to submissions of financial information and announce that no additional bidders will be provisionally selected for rural broadband experiments support. Third, we affirmatively remove one additional provisionally selected bidder from further consideration for failing to file a LOC commitment letter from a top 100 bank.

I. BACKGROUND

2. In the *Rural Broadband Experiments Order*, the Commission stated that provisionally selected bidders would be subject to a post-selection review by the Bureau to determine whether these entities should be authorized to receive support.¹ As part of this process, the Commission required provisionally selected bidders to submit certain financial and technical information by December 19, 2014.² The Commission also required provisionally selected bidders to submit a written commitment

¹ See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8786-93, paras. 51-71 (2014) (*Rural Broadband Experiments Order*).

² Entities were required to provide three years of audited financial statements, a description of the technology and system design used to deliver voice and broadband service, and a network diagram certified by a professional engineer. See *id.* at 8787-88, para. 54; see also *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, 29 FCC Rcd 14684, 14685 (Wireline Comp. Bur. 2014) (*Provisionally Selected Bidders Public Notice*). On January 30, 2015, the Bureau denied petitions from 15 entities seeking waiver of these requirements and removed them from further consideration for funding. See *Connect America Fund; Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-259, Order, 30 FCC Rcd 772 (Wireline Comp. Bur. 2015) (*Rural Broadband Experiments Waiver Order*).

letter from an acceptable bank to issue a LOC for each selected project bid.³ LTD Broadband, LLC (LTD Broadband) sought a 30-day extension to submit its commitment letter.⁴

3. Separately, 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 that some of the initial group defaulted before the Bureau finalized the list of eligible census blocks to be offered to the price cap carriers.⁵ Specifically, the Commission required all bidders interested in being considered for any newly available support to file, by January 6, 2015, three years of audited financial statements, a description of the technology and system design used to deliver voice and broadband service, and a network diagram certified by a professional engineer.⁶ Aristotle Telecom (Aristotle) and Worldcall Interconnect, Inc. (Worldcall), as well as several other entities, filed petitions for waiver or extension of that deadline.⁷

II. DISCUSSION

4. Consistent with precedent, we deny the extension sought by LTD Broadband and strictly enforce the LOC commitment letter deadline.⁸ We are not persuaded by LTD Broadband's claim that there would be no prejudice or delay to the Commission or other participants in the rural broadband experiments if the Bureau were to extend the deadline by 30 days, thereby aligning the deadline for provisionally selected bidders to submit proof of their ETC designation.⁹ During that time period, the

³ See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787-88, para. 54. Twelve entities met the February 3, 2015 deadline to file a commitment letter. See *Provisionally Selected Bidders Public Notice*, 30 FCC Rcd at 14693. Additionally, Valley Electric Cooperative affirmatively withdrew from further consideration for rural broadband experiments support.

⁴ See Request for Extension of Time to File LOC Commitment Letter of LTD Broadband, LLC, WC Docket Nos. 10-90, 14-259, 14-58 (filed Feb. 3, 2015) (LTD Broadband Petition).

⁵ 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*).

⁶ See *id.* at 1564-65, para. 83; see also *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).

⁷ See Letter from L. Elizabeth Bowles, President and Chairman of the Board, Aristotle, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-259, at 2-4 (filed Jan. 6, 2015) (Aristotle Petition); Letter from W. Scott McCullough, Counsel to Worldcall Interconnect, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 14-259, 10-90, at 7-15 (filed Jan. 6, 2015) (Worldcall Petition). Four other entities filed petitions for waiver or extension of the January 6th deadline, which were denied by the Bureau on March 3, 2015. See *Connect America Fund; Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-259, Order, 30 FCC Rcd 2022 (Wireline Comp. Bur. 2015) (*Rural Broadband Experiments Next-in-Line Waiver Order*).

⁸ See *December 2014 Connect America Fund Order*, 29 FCC Rcd at 15675, para. 84; *Rural Broadband Experiments Waiver Order*, 30 FCC Rcd at 774, para. 5; *Rural Broadband Experiments Next-in-Line Waiver Order* at para. 3. 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, 29 FCC Rcd 11583, 11583, para. 1 (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).

⁹ LTD Broadband Petition at 6-7.

Bureau was in the process of finalizing the resolution of the Phase II challenges and beginning the preparation of the final list of eligible census blocks to be used to make the offer of model-based support. Making individual adjustments to the deadlines for complying with the requirements established by the Commission would have delayed our ability to determine whether a particular bidder was in default, or not, impacting our ability to finalize the list of eligible census blocks to be used to make the offer of model-based support.¹⁰

5. Moreover, we are not persuaded by LTD Broadband's suggestion that it would be consistent with precedent to grant the requested deadline extension.¹¹ The Auctions and Spectrum Access Division of the Wireless Telecommunications Bureau granted a Tribally-owned entity more time to obtain a LOC commitment letter for the Mobility Fund Phase I auction after finding that the entity's "financing approval process was prolonged and complicated by the need to work with banks that lack with familiarity with issues of Tribal jurisdiction and administration of trust lands in Indian country."¹² In the *Rural Broadband Experiments Order*, the Commission acknowledged that there "may be a need for greater flexibility regarding LOCs for Tribally-owned or –controlled" entities due to the "unique economic challenges" faced by Tribal Nations.¹³ LTD Broadband is not a Tribally-owned or –controlled entity. LTD Broadband claimed that it needed more time because it was turned down by two potential issuing banks late in the process. It has not demonstrated that these circumstances are similarly "unique and unavoidable."¹⁴

6. We dismiss the requests of Aristotle and Worldcall for waiver or extension of the January 6th deadline to remain under consideration for rural broadband experiment support as moot. The Bureau has now finalized the list of census blocks eligible for the offer of model-based support and has announced the offers of support to the price cap carriers.¹⁵ Accordingly, no additional rural broadband experiment bids will be selected.

7. As an independent and alternative basis for our decision, if considered on the merits we would deny the requests. Aristotle sought a waiver of the requirement that entities file audited financial statements to remain under consideration for rural broadband experiment support.¹⁶ We determine that the standards for waiver have not been met.¹⁷ As we previously concluded,¹⁸ unaudited financial

¹⁰ In particular, whether particular census blocks are coded as eligible or ineligible for support would impact the model's calculation of the support to be offered to the price cap carriers. The Bureau had to finalize the list of census blocks removed from the model due to selection in the rural broadband experiments to complete the task of adopting the final cost model.

¹¹ LTD Broadband Petition at 3-4.

¹² *Standing Rock Telecommunications, Inc. Request for Limited Extension of Time to Submit Bank Commitment Letter for Mobility Fund Phase I Support (Auction 901)*, Order, 28 FCC Rcd 12853, 12857, para. 13 (Wireless Tel. Bur. 2013) (*Standing Rock Order*).

¹³ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8792, para. 67.

¹⁴ LTD Broadband Petition at 3-4; *Standing Rock Order*, 28 FCC Rcd at 12857, para. 13. *See also* Comments of Minnesota Telecom Alliance, WC Docket Nos. 14-259, 10-90, 14-58, at 2-13 (filed Feb. 13, 2015) ("Refusal of a banking institution to issue an irrevocable letter of credit to an applicant is neither uncommon, nor unforeseeable, in commerce.").

¹⁵ *See Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 15-509 (Wireline Comp. Bur. rel. Apr. 29, 2015).

¹⁶ Aristotle Petition at 2.

¹⁷ *See* 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*,

(continued....)

statements do not provide the same level of assurance as audited financial statements because they have not been audited by a neutral third party – an independent certified public accountant that is subject to professional standards when reaching a conclusion whether the financial statements prepared by management are in accordance with Generally Accepted Accounting Principles and free from material misstatement. Given the accelerated timing of the rural broadband experiments, we are not convinced that the public interest would be served by granting the waiver requests. Doing so would provide less assurance regarding the true financial picture of the petitioners and would likely require a more resource-intensive effort by the Bureau to assess the alternative financial materials of those entities seeking a waiver. This would divert the Bureau from fulfilling the Commission’s overarching objective of moving swiftly to implement Phase II.

8. In the alternative, we also deny Aristotle and Worldcall’s request that we extend the deadline so that they have time to obtain audited financials.¹⁹ As noted above, strict enforcement of the deadlines and filing requirements adopted by the Commission is appropriate given the accelerated time frame for the rural broadband experiments. We disagree with Worldcall’s claim that extending the deadline by only three weeks would not cause harm or delay the offer of model-based support.²⁰ The Commission adopted clear deadlines and made clear its commitment not to delay the offer of model-based support. Consistent with that direction, the Bureau completed its review of the Phase II challenge process and finalized the cost model to be used to determine the offer of model-based support, with the offer of support announced in late April. Allowing individual applicants to alter individual deadlines would have been disruptive to the orderly completion of those critical tasks. Extending the deadline for Aristotle and Worldcall would also be unfair to those entities that took the necessary steps to meet the deadline.

9. Finally, we also affirmatively remove Halstad from further consideration for rural broadband experiments support for failing to obtain a commitment letter from a top 100 U.S. bank. The Commission made a decision to draw a clear line at the largest 100 U.S. banks and largest 100 non-U.S. banks for purposes of the rural broadband experiments. This requirement was one of three eligibility requirements that the Commission determined would collectively provide assurance of the safety and soundness of the issuing bank.²¹ Because the bank Halstad chose is not in the top 100 U.S. banks, the Bureau would need to conduct a comprehensive review of the bank to determine whether drawing on the

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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).

¹⁸ *Rural Broadband Experiments Waiver Order*, 30 FCC Rcd at 775-76, paras. 6-7.

¹⁹ Aristotle sought an extension of the filing deadline to 60 days from the release of a public notice announcing Aristotle as a provisionally selected winner because it claims it needs time to retain an auditor and go through the audit. Aristotle Petition at 2-3. Worldcall requested that the Bureau extend the deadline to January 31st and claimed that it does not have audited financials because it previously determined that it would be too expensive to obtain audited financials without assurance that it would win rural broadband experiment support. Worldcall Petition at 7-8, 10-12. Thus, neither entity was prepared to meet the requirements established by the Commission to remain under consideration for any support that might become available before the Bureau finalized the offer of model-based support.

²⁰ Worldcall Petition at 8, 10-12.

²¹ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8790, para. 59. A U.S. issuing bank must also be insured by the Federal Deposit Insurance Corporation or the Farm Credit System Insurance Corporation, and have a credit rating issued by Standard & Poor’s of BBB- or better (or the equivalent from a nationally recognized credit rating agency). *Id.* at 8790, paras. 59-60.

LOC could potentially exhaust its assets. We are not in a position to review on a case-by-case basis each non-top 100 bank from which a bidder in these experiments may obtain a LOC to ensure that the Commission would be able to recover public funding in the event of a default.

III. ORDERING CLAUSES

10. 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.

11. IT IS FURTHER ORDERED that the request for an extension of the February 3, 2015 deadline for obtaining a letter of credit commitment letter filed by LTD Broadband IS DENIED as described herein.

12. IT IS FURTHER ORDERED that the petitions for waiver of the rural broadband experiments financial review requirements, which required bidders interested in remaining under consideration for support to provide the most recent three consecutive years of audited financial statements, and/or requesting an extension of the January 6, 2015 deadline filed by Aristotle Telecom and Worldcall Interconnect, Inc., ARE DISMISSED AS MOOT, or in the alternative DENIED, as described herein.

13. IT IS FURTHER ORDERED that the application of Halstad is removed from further consideration as described herein.

14. 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 E. Matthey
Deputy Chief
Wireline Competition Bureau