

**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: February 1, 2016

Released: February 1, 2016

By the Deputy Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) denies the petition filed by Electric Power Board of Chattanooga (EPB) in which it seeks waiver and extension of the deadline to submit proof of its eligible telecommunications carrier (ETC) designation in all areas covered by its provisionally selected rural broadband experiments bid.¹ Because we do not find good cause to waive this requirement, we remove EPB from further consideration for rural broadband experiments support.²

I. BACKGROUND

2. In the *Rural Broadband Experiments Order*, the Commission adopted an objective methodology for selecting among rural broadband experiments project proposals.³ The Commission also established a post-selection review process to enable the Bureau to assess provisionally selected bidders' financial and technical capabilities to meet their commitments and ultimately, to determine whether these bidders should be authorized to receive support.⁴ As part of this process, the Commission required provisionally selected bidders to provide, among other things, appropriate documentation of their designation as an ETC in all areas for which they were selected to receive support within 90 days of the Bureau's public notice announcing a bid's provisional selection.⁵ The Commission explained that while bidders "need not be ETCs at the time they initially submit their formal proposals for funding," the failure to timely provide proof of appropriate ETC designation would constitute default, warranting removal of the bid from any further consideration for rural broadband experiment support.⁶

¹ Electric Power Board of Chattanooga, Petition for Limited Waiver of Deadline to Submit ETC Designation Documentation for Rural Broadband Experiments, WC Docket No. 14-259 (filed June 2, 2015) (EPB Waiver Petition).

² See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788 n.95 (authority to act on requests to waive timing of ETC designations delegated to Wireline Competition Bureau).

³ See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90 and 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*).

⁴ See *id.*

⁵ See *id.* at 8778-79, 8788, paras. 22-23, 54.

⁶ See *id.* at 8778, para. 22.

3. On December 5, 2014, the Bureau released a public notice announcing the provisional selection of a first round of bids.⁷ On March 4, 2015, the Bureau released a second public notice announcing its provisional selection of a second round of bids,⁸ including EPB's \$710,147 bid to serve 128 census blocks in rural Tennessee.⁹ This announcement, as specified therein, triggered EPB's duty to provide proof of ETC designation by June 2, 2015.¹⁰ Instead, on June 2, 2015, EPB filed a petition seeking waiver and extension of this obligation.¹¹

II. DISCUSSION

4. We find no good cause to grant EPB's waiver petition.¹² EPB requests additional time to complete an ETC designation application, submit it to the Tennessee Regulatory Authority (TRA) and receive from the TRA the required designation.¹³ Other than generally averring good faith efforts to comply with its June 2 deadline,¹⁴ however, EPB provides no explanation for, or defense of, its failure to submit its ETC application to the TRA at any point during the 90 days between the provisional selection of its bid and the associated June 2 deadline to submit proof of ETC designation.¹⁵ Moreover, even though EPB commits in its petition to keeping the FCC "fully apprised of any and all developments throughout the application process at the TRA," EPB has not filed any additional documentation or otherwise contacted the FCC since filing its waiver petition.¹⁶ Indeed, to this date, EPB has submitted no evidence that it ever even filed an ETC application with the TRA.

5. With no evidence of extraordinary circumstances or good faith efforts before us, the Bureau concludes that waiver is not warranted in this case. Therefore, the Bureau finds that EPB has defaulted on

⁷ *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 (WCB 2014).

⁸ *Wireline Competition Bureau Announces Additional Provisionally Selected Bidders for Rural Broadband Experiments and Sets Deadlines for Submission of Additional Information*, WC Docket Nos. 10-90 and 14-259, Public Notice, 30 FCC Rcd 2045 (WCB 2015).

⁹ *Id.* at Attach.

¹⁰ *Id.* at 2046.

¹¹ See EPB Waiver Petition.

¹² The Commission may waive its policies or rules upon a showing of good cause and may take into account, on an individual basis, considerations of hardship, equity, or more effective implementation of overall policy. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); see also *NE Cellular Tele. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). However, waiver of the Commission's policies or 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. See *Network IP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (citing *NE Cellular Tele. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)). "[D]eadlines can only be waived under 'unusual or compelling circumstances.'" See *id.* at 126 (citation omitted).

¹³ EPB Waiver Petition at 1–2 (stating that EPB is "in the process of preparing an Application for ETC Designation to submit to the Tennessee Regulatory Authority" and that it is "ready, willing and able" to meet all the requirements for ETC designation).

¹⁴ See *id.* at 2.

¹⁵ In the *Rural Broadband Experiments Order*, the Commission stated that it would presume an entity to have shown good faith to meet the 90-day deadline if it filed its ETC application within 15 days of release of the public notice announcing the winning bidders. See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8778, para. 22 n.52. Here, EPB waited until the 90-day deadline to file a petition for waiver.

¹⁶ EPB Waiver Petition at 2.

its post-selection obligation to show proof of ETC designation. Accordingly, we remove EPB from further consideration for rural broadband experiments support.

III. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 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 petition for waiver filed by Electric Power Board of Chattanooga IS DENIED as described herein.

8. IT IS FURTHER ORDERED that the application of Electric Power Board of Chattanooga IS REMOVED from further consideration as described herein.

9. 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