

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Connect America Fund ) WC Docket No. 10-90
ETC Annual Reports and Certifications ) WC Docket No. 14-259
Petition of Lake County Minnesota for )
Relinquishment of its Status as a Rural Broadband )
Experiments Support Recipient and for a Section )
1.3 Waiver of the Deployment Schedule )
Petition for Waiver of Northeast Rural Services, )
Inc. )

ORDER

Adopted: December 18, 2019

Released: December 18, 2019

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we consider petitions, separately filed by Lake County, Minnesota (Lake County) and Northeast Rural Services, Inc. (NRS) (collectively, petitioners), in which petitioners seek to relinquish their status as rural broadband experiments universal service funding recipients in certain study areas.1 Lake County also seeks waiver of the Commission’s rural broadband experiments default rules providing for full recovery of support, so that it may retain a percentage of the support awarded equal to the percentage of locations it certified as served prior to default.2 We find that Lake County has not established good cause for waiver and, accordingly, deny it the requested waiver relief. NRS also seeks waiver of the Commission’s rural broadband experiments default rules but only to the extent that the rules provide for a draw on the letter of credit instead of permitting NRS to repay the full amount of disbursed support directly and immediately.3 We find that NRS has established good cause for granting its requested relief.

1 Petition of Lake County Minnesota for Relinquishment of its Status as a Rural Broadband Experiments Support Recipient and for a Section 1.3 Waiver of the Deployment Schedule, WC Docket Nos. 10-90, 14-58 (filed May 17, 2019) (Lake County Petition); Petition for Waiver of Northeast Rural Services, Inc., WC Docket Nos. 10-90, 14-259 (filed May 16, 2019) (NRS Petition); Petition for Waiver of Northeast Rural Services, Inc., WC Docket Nos. 10-90, 14-259 (filed Oct. 1, 2019) (Second NRS Petition).

2 Lake County Petition at 7-8; 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, 8830, para. 93 (2014) (Rural Broadband Experiments Order).

3 NRS Petition at 3-7; Second NRS Petition at 3-7; see Rural Broadband Experiments Order, 29 FCC Rcd at 8830, para. 93.

## II. BACKGROUND

2. *Rural Broadband Experiments Program.* On July 14, 2014, the Commission released an order establishing the rural broadband experiments program to simultaneously “encourage deployment of robust networks capable of offering voice and broadband service to consumers in high-cost areas,” and to “help [the Commission] to design the Phase II competitive bidding process and the Remote Areas Fund to efficiently achieve this goal.”<sup>4</sup> The Commission designed this program to allocate support in price-cap territories where the average cost of service exceeds a certain high-cost threshold, as determined by the Connect America Model (CAM), exclusive of areas already served by an unsubsidized competitor.<sup>5</sup> In exchange for such support, rural broadband experiments support recipients committed to serving a certain number of funded locations within each of their study areas.<sup>6</sup>

3. To ensure that recipients were using support for its intended purpose and to monitor their progress in meeting their obligations, the Commission required rural broadband experiments support recipients to submit information about their served locations on an annual basis and to certify, by certain deadlines, incremental progress in meeting their defined deployment obligations, measured as a percentage of their full obligation (deployment milestones).<sup>7</sup> The Commission acknowledged that there could be circumstances, outside of the recipient’s control, that could delay or prevent them from meeting their deployment milestones and invited participants in such situations to submit petitions for waiver.<sup>8</sup>

4. The Commission also required recipients to maintain a letter of credit so that the Commission would be able to “protect the integrity of universal service funds that have been disbursed and immediately reclaim support that has been provided in the event that the recipient is not using those funds in accordance with the Commission’s rules and requirements to further the objectives of universal service.”<sup>9</sup> The Commission explained that this requirement “shifts the risk associated with non-compliance from the Commission to the recipient” and helps ensure that recovery is not delayed or obstructed by agency appeals of the default finding.<sup>10</sup>

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<sup>4</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8774, para. 11.

<sup>5</sup> *Id.* at 8775, 8786, paras. 13, 51; *see Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90 and 14-93, Order, 30 FCC Rcd 2718, 2718-19, para. 3 (WCB 2015) (setting forth the results of a challenge process identifying census blocks served by an unsubsidized competitor and, thereby, ineligible for rural broadband experiments support); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 26 FCC Rcd 17663, 1772, para. 170 (2011) (specifying that Phase II support would not be provided in areas served by an unsubsidized competitor and delegating to the Wireline Competition Bureau (Bureau) the responsibility of determining those areas), *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>6</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8775-76, paras. 13-15, n.34; *Technology Transitions et al.*, WC Docket No. 10-90 et al., Order et al., 29 FCC Rcd 1433, 1472, para. 111 (2014).

<sup>7</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8794, para. 74 (specifying that by the end of their third year, recipients must offer the requisite level of service to at least 85% of the number of required locations and, by the end of the fifth year, 100% of all such locations); *Id.* at 8794, para. 75 (specifying that recipients electing to receive accelerated payments must meet an additional 25% milestone occurring 15 months after their first support disbursement).

<sup>8</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8800, para. 95. The Commission stated that if the petitioner defaulted on its performance obligations while its waiver petition was pending, the Bureau should move forward with default measures, subject to full restoration of support and support payments should the petition be subsequently granted. *Id.*

<sup>9</sup> *Id.* at 8788-8789, para. 56; *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 31 FCC Rcd 2384, 2387-88, paras. 10-13 (2016) (modifying the rural broadband experiments rules to require recipients to maintain a letter of credit until their build-out is complete and verified, rather than for their entire support term).

<sup>10</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 9793, para. 73.

5. The Commission directed the Bureau to issue a letter evidencing any recipient's default on any of its funding-related obligations.<sup>11</sup> The default letter would then trigger a 12-month withholding period (with an increase in withholding after the first six months).<sup>12</sup> During this withholding period, the funding recipient could cure its default.<sup>13</sup> If, at the end of the 12-month period, the recipient did not cure the default, the Commission would issue a letter to that effect and draw on the letter of credit securing all support disbursed.<sup>14</sup> Recipients would then have one additional opportunity to cure the default at any time during the support term.<sup>15</sup> Once a default is cured, the recipient is entitled to withheld or recovered support and becomes eligible to receive any remaining full support payments in accordance with the terms of its award.<sup>16</sup>

6. In November 2014, bidders placed bids for rural broadband experiments support, and on December 5, 2014, the Bureau provisionally selected the first round of winning bidders.<sup>17</sup> On March 4, 2015, the Bureau announced a second round of provisionally selected bidders.<sup>18</sup> In three public notices released on September 11, 2015, December 11, 2015, and December 12, 2016, respectively, the Bureau authorized NRS to receive, among other amounts for additional study areas, a total of \$1,659,016.18 in support in exchange for its commitment to bring new broadband service to five study areas in Oklahoma.<sup>19</sup> On December 12, 2016, the Bureau authorized Lake County to receive \$3,491,280.18 in support in exchange for its commitment to bring new broadband service to one study area in Minnesota.<sup>20</sup> Information about each petitioner's relevant awards is provided in the Attachment to this Order.

7. *Lake County Petition for Waiver.* In its May 17, 2019 petition, Lake County explains that it could not obtain the financing required to continue operation and expansion of its network necessary to fulfill its obligations under the rural broadband experiments program and under the terms and conditions of its Broadband Initiatives Program (BIP) combined grant and loan.<sup>21</sup> As a result, Lake County entered into a Memorandum of Understanding with the United States Department of Agriculture's Rural Utilities

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<sup>11</sup> *Id.* at 8799, para. 92.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 8799, para. 93.

<sup>15</sup> *Id.* at 8799-800, para. 93.

<sup>16</sup> *Id.* at 8799-8800, paras. 92-93.

<sup>17</sup> *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, WC Docket Nos. 10-90 and 14-259, Public Notice, 29 FCC Rcd 14684 (WCB 2014).

<sup>18</sup> *See 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).

<sup>19</sup> *See Rural Broadband Experiment Support Authorized for Winning Bids Submitted by Big Bend Telecom, Ltd. and Northeast Rural Services, Inc.*, 31 FCC Rcd 9789 (WCB Sept. 12, 2016) (authorizing support for SACs 436145 (project 3) and 436147 (project 9)); *Rural Broadband Experiment Support Authorized for Five Winning Bids for First Step Internet, LLC and Northeast Rural Services, Inc.*, WC Docket Nos. 10-90 and 14-259, Public Notice, 30 FCC Rcd 9886 (WCB 2015) (authorizing support for SAC 436142 (project 5)); *Rural Broadband Experiment Support Authorized for Winning Bids Submitted by BARC Electric Cooperative, Douglas Services, Inc., And Northeast Rural Services, Inc.*, WC Docket Nos. 10-90 and 14-259, Public Notice, 30 FCC Rcd 14126 (WCB 2015) (SAC 436112 (project 1) and SAC 436114 (project 6)).

<sup>20</sup> *Rural Broadband Experiments Support Authorized for Winning Bid Submitted by Lake County, Minnesota d/b/a Lake Connections*, WC Docket Nos. 10-90 and 14-259, Public Notice, 31 FCC Rcd 13133 (WCB 2016).

<sup>21</sup> Lake County Petition at 3.

Service (RUS), the credit agency that administers BIP, to develop “a highly structured sales process,” involving the sale of the Lake County network to a qualified broadband provider (through a competitive bidding process) and the remittance of all sale proceeds to the RUS in satisfaction of its obligations to the BIP and in exchange for the release of RUS’s lien on the network.<sup>22</sup> Lake County explains that, pursuant to this process, it selected a qualified broadband provider unwilling to assume any of Lake County’s obligations as a rural broadband experiments support recipient.<sup>23</sup>

8. Lake County states that because it met its 15-month 25% milestone and has not yet reached its three-year 85% milestone, it has not yet defaulted on its rural broadband experiments obligations.<sup>24</sup> Lake County also asserts that it is not, itself, a provider of telecommunications services but has contracted with local service providers, first its wholly-owned subsidiary, Lake Communications, and then a third-party provider, Contel Systems, Inc., to provide managed services on its behalf.<sup>25</sup> As noted by Lake County, the Bureau in 2017 approved the transfer of assets from Lake Communications to Contel Systems, Inc.<sup>26</sup> Lake County thus characterizes its request to relinquish its recipient status as voluntary and requests that the Commission enter into an agreement with Lake County to repay all “non-expended” support in exchange for release from all future obligations.<sup>27</sup> In the alternative, Lake County requests

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<sup>22</sup> *Id.* at 3-4.

<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.* at 5-6. As part of its ETC application before the Minnesota Public Utilities Commission, Lake County proposed the use of a wholly-owned subsidiary, Lake Communications, to manage the provision of the required voice service while directly providing broadband service under the d/b/a Lake Connections. The Minnesota Public Utilities Commission (Michigan PUC) approved this arrangement on July 27, 2015. Petition of Lake County, Minnesota d/b/a Lake Connections for ETC Designation, Order Granting Petition Subject to Conditions and Requiring Compliance Filing, Docket No.: P-6944/M-15-65 (July 27, 2015) (conditioning grant of Lake County’s petition for ETC designation on a contractual provision making Lake County the entity legally and financially responsible for providing section 254(c)(1) supported telecommunications service); Order Granting Petition for ETC Designation, Docket No. : P-6944/M-15-65 (Dec. 2, 2015) (finding that Lake County had satisfied the conditions set forth in the July 27, 2015 Michigan PUC Order by ensuring that Lake County would remain “legally and financially responsible to provide all mandated services and to comply with all other statutory and regulatory requirements applicable to ETCs”). Accordingly, the FCC accepted this ETC designation with the understanding that Lake County would be ultimately responsible for the legal obligations and consequences of ETC designation, including all service requirements associated with the support it receives. *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197 and 10-90, Public Notice, 33 FCC Rcd 6696, 6699 (WCB 2018) (explaining that to satisfy the statutory requirement under section 214(e)(1) of the Communications Act, and the regulatory requirement in section 54.201 of the Commission’s rules, an ETC must offer voice through a “managed voice solution”); *see also id.* at 6699 & n.26.

<sup>25</sup> Lake County Petition at 5.

<sup>26</sup> *Id.* at 6; *Notice of Domestic Section 214 Authorization Granted*, WC Docket No. 17-64, Public Notice, 32 FCC Rcd 311 (WCB 2017); 47 U.S.C. § 214. Pursuant to this transaction, Contel Systems, Inc. acquired all of Lake Communications’ assets used to provide resold local exchange and long-distance toll service (including Lake Communication’s blanket domestic section 214 authorization). *Domestic Section 214 Application Filed for the Acquisition of Assets of Lake Communications by Contel Systems, Inc.*, Public Notice, 32 FCC Rcd 1957, 1958 (2017). Because of such transaction, Lake County asserts, it is not a domestic provider of service that must obtain prior Commission authorization to discontinue voice services under section 63.71 of the Commission’s rules. Lake County Petition at 5-6; 47 CFR § 63.71. While this specific contention is beyond the scope of the requested relief and, therefore, the Bureau will not address it at this time, the Bureau considers Lake County a provider of telecommunications services with specific obligations under the rural broadband experiments program until it properly relinquishes its ETC status.

<sup>27</sup> Lake County Petition at 4, 7.

waiver relief from rural broadband experiments default rules to the extent that they require full recovery of disbursed support.<sup>28</sup>

9. Specifically, Lake County seeks to retain a percentage of the awarded support equivalent to the percentage of the defined deployment obligation it certified as served as of its 15-month milestone, or 36.51%.<sup>29</sup> In real terms and as revised to reflect a final payment after this waiver request was submitted, this percentage equals \$1,274,666.30 of \$3,491,280.18 awarded and \$1,653,759.33 disbursed.<sup>30</sup> Lake County states that its request is both “reasonable” and “justified” because its deployment efforts “appreciably advance the Commission’s underlying goal of expanding rural broadband availability.”<sup>31</sup>

10. *NRS Petitions for Waiver.* NRS also seeks to relinquish its rural broadband experiments support recipient status in five of its study areas, explaining that it “does not believe it will be able to meet the build-out milestones” in these areas and that, even if it could accomplish this goal, it would not be “economically feasible” to do so.<sup>32</sup> NRS does not contest the Bureau’s findings that in three of these study areas, it has failed to meet its three-year, 85% milestone, and, therefore, is in performance default in these areas.<sup>33</sup> For the other two study areas relevant here, the three-year milestone fell on October 1, 2019, and, therefore, as of the filing date of the waiver request, the Commission had not yet issued a letter finding default despite NRS’s acknowledgment that it “does not believe” it will meet this milestone in these two study areas.<sup>34</sup> NRS seeks only a limited waiver of the Commission’s procedural rules requiring a draw on the letter of credit so that it may repay all of the disbursed support immediately and directly.<sup>35</sup>

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* Lake County states that it certified 3,102 locations, or 36.51%, of its total defined deployment obligation of 8,497 locations, as of this milestone. *Id.*

<sup>30</sup> See Lake County Petition at 7. Lake County specifically requested that the Commission immediately discontinue support payments. *Id.* at 7 n.10. Consistent with the desire of both petitioners to relinquish their status as support recipients, the Commission directed USAC to discontinue all support payments to the petitioners pending resolution of their petitions. USAC discontinued payments associated with the three study areas for which NRS initially sought to relinquish its status as a rural broadband experiments support recipient as of May 2019, and the payments associated with the other two study areas as of October 2019. We note that Lake County’s calculation of disbursed support for the first three study areas is less than the number we have revised above, because Lake County received one additional monthly payment for these study areas after submitting this waiver request.

<sup>31</sup> Lake County Petition at 8.

<sup>32</sup> NRS Petition at 3-4; Second NRS Petition at 3-4. NRS further explains that it has experienced delays and difficulties in obtaining the required pole attachment permits, which in turn caused delays in the associated make-ready processes and led to increased requirements to deploy underground. NRS Petition at 3; Second NRS Petition at 3. NRS states that underground installation was more expensive than aerial installation due to a significant amount of rock in some areas. *Id.* NRS also alleges that inequitable franchising agreements in certain areas have created barriers to entry. *Id.*

<sup>33</sup> Letter from Ryan B. Palmer, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, FCC to Anthony Due, General Manager, Northeast Rural Services, Inc. (Mar. 6, 2019) (finding NRS in default in, among other study areas, three of the five study areas relevant here, i.e., Study Area Codes (SACs) 436112 (project 1), 436142 (project 5), and 436114 (project 6), and directing USAC to begin withholding support in according with the Commission’s rules).

<sup>34</sup> Second NRS Petition at 3.

<sup>35</sup> NRS Petition at 3; Second NRS Petition at 3. NRS explains that it is in “possession of the full amount of the disbursed support.” NRS Petition at 6; Second NRS Petition at 6. NRS states that it has received support in the following amounts for each of the relevant study areas covered by its first petition: \$90,384.05 for SAC 436112 (project 1); \$151,160.79 for SAC 436142 (project 5); and \$130,898.93 for SAC 436114 (project 6). *Id.* at 2. NRS states that it has received the following amounts for of the relevant study areas covered by its second petition: \$22,068.28 for SAC 436145 (project 3), and \$166,590.28 for SAC 436147 (project 9). Second NRS Petition at 2.

(continued....)

NRS asserts that permitting such payment would help facilitate the swift recovery of support and is consistent with payment procedures adopted in the CAF Phase II auction proceeding.<sup>36</sup>

11. *Waiver Standard.* The Commission may waive its rules and requirements for “good cause shown.”<sup>37</sup> Good cause, in turn, may be found “where particular facts would make strict compliance inconsistent with the public interest.”<sup>38</sup> In making this determination, the Commission may “take into account considerations of hardship, equity, or more effective implementation of overall policy.”<sup>39</sup> Waiver of the Commission’s rules is “appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”<sup>40</sup> To make such a public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.<sup>41</sup> In this Order, the Bureau acts pursuant to its general authority to clarify and waive certain rules.<sup>42</sup>

### III. DISCUSSION

12. *Lake County’s Petition.* As an initial matter, we find Lake County in default of its rural broadband experiments obligations. Contrary to Lake County’s contentions, Lake County’s relinquishment of its rural broadband experiments status is not voluntary simply because Lake County has not yet missed a deployment milestone.<sup>43</sup> The Commission’s consent to the transfer of assets held by Lake Communications to Contel Systems, Inc. did not absolve Lake County of its continuing obligations, as an ETC and as a funding recipient, to offer both voice and broadband service in its study area.<sup>44</sup> Lake County, however, terminated its contract with Contel Systems, Inc. for the provision of such services upon consummation of the sale of its network to a third-party provider on June 3, 2018.<sup>45</sup> As Lake County states, this third-party provider will not assume any of the rural broadband experiments

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We note that NRS’s calculation of disbursed support for the first three study areas (SACs 436112, 436142, and 436114) is less than USAC’s accounting, as summarized in the Attachment, since NRS received one additional support payment for each SAC before USAC stopped payments.

<sup>36</sup> NRS Petition at 6 (citing *Connect America Fund, Connect America Fund Phase II Auction*, WC Docket No. 10-90; AU Docket No. 17-182, Order, 34 FCC Rcd 3239, 3240, para. 5 (WCB 2019)); Second NRS Petition at 6.

<sup>37</sup> 47 CFR § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).

<sup>38</sup> *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>39</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>40</sup> *Ne. Cellular Tel. Co.*, 897 F.2d at 1166.

<sup>41</sup> See, e.g., *Request for Permanent Renewal of, and Changes to Conditions on, Waiver Granted to SafeView, Inc.*, Order, 26 FCC Rcd 10250, 10252 (OET 2011) (citing *Ne. Cellular Tel. Co.*, 897 F.2d at 1166); see also *WAIT Radio*, 418 F.2d at 1155, 1157.

<sup>42</sup> See 47 CFR §§ 0.91 (describing the functions of the Bureau), 0.201(d) (“The Commission ... may delegate its functions . . .”), 0.291 (delegating authority to the Bureau chief).

<sup>43</sup> Lake County Petition at 7.

<sup>44</sup> *Cf. id.* at 5-6 (asserting that as of the Commission’s authorization of the asset transfer, Lake County no longer was responsible for offering “telecommunications services”).

<sup>45</sup> See Notice of Termination by Contel Systems, Inc., MPUC Docket No.: P6944/RL-19-195 (May 7, 2019) (explaining that upon the sale of the network, the transport and management agreements with Lake County would be terminated); Lake County, Minnesota, d/b/a Lake Connections Reply Comments, Petition of Lake County for Relinquishment of ETC Designation, MPUC Docket No.: P6944/RL-19-195 at 1 (filed June 7, 2019) (stating that the sale of Lake County’s network occurred on June 3, 2019).

obligations and commitments made by Lake County.<sup>46</sup> Accordingly, there is no guarantee that Lake County's partially-built network will continue to be used to provide the requisite services.<sup>47</sup> We thus find that Lake County has permanently defaulted on its service obligations.<sup>48</sup>

13. Lake County, in the alternative, also seeks waiver of the Commission's default rules to allow it to retain a certain percentage of the awarded support equal to the percentage of its total defined deployment obligation it met as of its 15-month, 25% build-out milestone.<sup>49</sup> Lake County presents two possible bases for finding special circumstances: (1) its financial challenges, and (2) its satisfaction of the first milestone.<sup>50</sup> We find neither justification persuasive. Lake County's financial challenges result from Lake County's independent business judgments regarding the risks and benefits of participating in the rural broadband experiments program.<sup>51</sup> The Commission has consistently refused to grant waiver requests premised upon such business judgments.<sup>52</sup> Our finding that Lake County has not demonstrated good cause to grant the requested waiver relief is only compounded by Lake County's failure to allege, let alone demonstrate, that it performed the requisite level of due diligence in exercising such judgment.<sup>53</sup> Lake County's compliance with its first milestone also is not a special circumstance. Indeed, Lake County does not proffer a reason or justification for such assertion that would differentiate it from any other recipient of rural broadband experiments support defaulting on its obligations (other than the assertion, which we have rejected, that it is "voluntarily relinquishing" its status as rural broadband experiments support recipient).<sup>54</sup>

14. Our conclusion that Lake County has not demonstrated special circumstances, standing alone, provides grounds for denying this petition. We nonetheless consider the public interest benefits of Lake County's requested waiver relief and similarly find that the public interest prong of the waiver

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<sup>46</sup> Lake County has filed a petition for relinquishment of its ETC status with the Minnesota PUC. Lake County, Minnesota, d/b/a Lake Connections Reply Comments, Petition of Lake County for Relinquishment of ETC Designation, MPUC Docket No.: P6944/RL-19-195 at 1 (filed June 7, 2019).

<sup>47</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8999, para 90 (explaining that "performance default will also occur if the winning bidder does not offer service to the required number of locations that meet the public interest obligations we have adopted for the experiments, including speed, latency, data usage, and reasonably comparable pricing").

<sup>48</sup> Lake County Petition at 5.

<sup>49</sup> *Id.* at 7.

<sup>50</sup> *Id.* at 3, 6.

<sup>51</sup> See *BDPCS, Inc. et al.*, Memorandum Opinion and Order, 15 FCC Rcd 17590, 17604-07, para. 27-30 (2000) (finding that loss of expected source of funding cannot justify waiver of the Commission's rules and that the Commission is not required to "police the private business activities of each bidder").

<sup>52</sup> See, e.g., *Commnet Supply, LLC, Request for Waiver and Extension of PCS Construction Requirements, Request for Renewal of PCS License*, Order, 27 FCC Rcd 5832, 5837, para. 16 (WTB 2012) (denying requests for waiver and renewal of PCS license, noting that Commission "consistently rejected the argument that voluntary business decisions by a licensee, particularly those motivated by economic factors, create situations beyond the licensee's control that would justify an extension" of construction requirements); *Globalstar, L.P.*, Memorandum Opinion and Order, 18 FCC Rcd 1249, 1252, para. 8 (IB 2003) (business decisions based on economic considerations are not circumstances outside the control of the licensee and do not warrant an extension).

<sup>53</sup> See *Wireline Competition Bureau Announces Application Process for Entities Interested in Participating in the Rural Broadband Experiments*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 10016, 10032-33, paras. 52-54 (WCB 2014) (explaining that applicants for rural broadband experiments support applicants were "sole[ly] responsible" for evaluating the technical and marketplace factors that would bear on their ability to comply with program requirements and the applicants should approach the bidding process as they would any other business venture) (*Rural Broadband Experiments Application Process Public Notice*).

<sup>54</sup> Lake County Petition at 4.

standard is not met. Lake County argues that it should be able to retain some of the disbursed support because, in meeting its 15-month milestone, it contributed to the “underlying goal of expanding rural broadband availability.”<sup>55</sup> Lake County, however, misunderstands the purpose of these milestones and the nature of its obligations. These milestones are prerequisites to completion of the obligation but do not constitute wholly separate obligations severable from the overall commitment. Rather, these milestones help ensure that the recipient is making consistent and cumulative progress toward its commitment and that it is offering continuous service.<sup>56</sup> The milestones serve the policy goals of this program by encouraging the development of complete and “robust” networks.<sup>57</sup>

15. Even were we to treat deployments under each milestone as a separate continuing obligation, Lake County has failed to so perform because there is no assurance that the partial network will continue to offer service to consumers that meets or exceeds minimum rural broadband experiments standards for the bid type until the support term ends. Indeed, other than indicating that the purchaser is a “qualified broadband provider” per the terms of its agreement with RUS, Lake County provides no information about the purchaser’s intended service offerings.<sup>58</sup> We note, however, that the purchaser is not certificated as a telecommunications provider in Minnesota nor has it been designated as an ETC.<sup>59</sup> Accordingly, the purchaser is not providing a service analogous to that offered in and through the rural broadband experiments program.

16. Finally, we note that deviation from the default measures adopted in the *Rural Broadband Experiments Order* would compromise the integrity of the bidding process. Participants in the program that completed their due diligence developed bidding strategies that included an assessment of the risk of noncompliance and the consequences for default.<sup>60</sup> It would be inequitable to modify the default rules to allow Lake County to retain support in these circumstances. For these reasons, we conclude that granting Lake County’s petition for waiver would not serve the public interest, which forms an independent basis for denial of the waiver request.

17. *NRS’s Petition.* We find that NRS has established good cause for its requested waiver relief and, therefore, grant its request conditioned on its permanent relinquishment of its status as a rural broadband experiments support recipient for the five SACs at issue and repayment to USAC of all disbursed support within 30 days of the release of this Order.

18. In granting this relief, we stress that NRS is not requesting waiver of the requirement to pay all disbursed support or an extension of the time frame specified in the *Rural Broadband Experiments Order* for the Commission’s recovery.<sup>61</sup> Instead, NRS seeks only to repay the entire amount of disbursed support for five study areas immediately through means other than a draw on the letter of credit.<sup>62</sup> We

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<sup>55</sup> *Id.* at 7.

<sup>56</sup> See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8794, para. 73 (explaining that “establishing clearly defined build-out requirements will ensure that recipients remain on track to meet their public service obligations and that Connect America funds are being used to deploy robust networks consistent with their intended purpose”); *Id.* at 8772, 8791, 8834, paras. 7, 63, 65 (characterizing milestones as a “condition on the receipt of support”).

<sup>57</sup> See *id.* at 8774, para. 11.

<sup>58</sup> Lake County Petition at 3.

<sup>59</sup> Lake County Petition at 7. Lake County has provided no supporting evidence for its contention that it “properly spent” 36.51% of the disbursed support in deploying its network. Moreover, Lake County received 30% of its support upfront in exchange for committing to serve 25% of its defined deployment obligation within 15 months of its authorization, and, therefore, the average disbursed support during this time frame, on a per-location served basis, is significantly higher than the average per-location awarded support. *Id.* at 8834, para. 65.

<sup>60</sup> See *Rural Broadband Experiments Application Process Public Notice*, 29 FCC Rcd at 10032-33, paras. 52-54.

<sup>61</sup> See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8879-8800, paras. 92-93.

<sup>62</sup> NRS Petition at 6; Second NRS Petition at 6.



note that for three of these study areas (SACs 436112, 436142, 436114), the Bureau has already determined NRS to be in default of its 85% milestone and that NRS does not contest this finding.<sup>63</sup> For the remaining two study areas (SACs 436145, 436147), the Bureau now find NRS in default of its obligations based on its representations indicating that it does not intend to complete deployment.<sup>64</sup> As a condition of granting this relief, NRS will not be able to “cure” these defaults in accordance with the Commission’s procedures established in the *Rural Broadband Experiments Order*.<sup>65</sup>

19. Accordingly, grant of this waiver relief will give NRS no advantage over other recipients, does not retroactively change application requirements or on-going obligations, will help facilitate swift recovery of support for reallocation to other USF programs, and is more administratively efficient. For these reasons, we find that NRS has demonstrated special circumstances warranting waiver relief and that waiver will serve the public interest. Thus, we find good cause for granting the requested relief and for extending such relief to all other recipients of rural broadband experiments support.

20. *Summation and Procedural Steps.* In sum, we find that both petitioners have permanently defaulted on their rural broadband experiments obligations in the relevant study areas and, accordingly, we accept their requests to relinquish their statuses as recipients of rural broadband experiments support for the relevant study areas.

21. We also find that Lake County has failed to demonstrate good cause for waiver of the Commission’s default rules to permit it to retain a percentage of its disbursed support based on the average amount of disbursed support per location reported as served as of its 15-month milestone. Because we find that Lake County has permanently defaulted on its obligations and we deny the requested waiver relief, this Order, when attached to the letter of credit draw certification, shall be sufficient to authorize a draw on the letter of credit.

22. We find that NRS has demonstrated good cause for waiver of the Commission’s default rules to permit it to repay the full amount of disbursed support directly and immediately. We direct USAC to seek repayment on a study area basis. If USAC does receive such payment, the Bureau will issue a letter evidencing the timely repayment. This letter, when attached to the Letter of Credit Termination Certificate, shall be sufficient to terminate the letter of credit based on fulfillment of the provisions in the *Rural Broadband Experiments Order*. If USAC does not receive full payment of all disbursed support within 30 days of USAC’s demand, the Bureau will immediately issue a letter evidencing the permanent default and the failure to pay, which, when attached to the Letter of Credit Draw Certificate, shall be sufficient to authorize draw on the letter of credit.

#### IV. ORDERING CLAUSES

23. 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), and 254, and sections 0.91, 0.291, and 1.3 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, and 1.3, that this Order IS ADOPTED.

24. IT IS FURTHER ORDERED that the Petition for Waiver filed by Lake County, Minnesota is DENIED as described herein.

25. IT IS FURTHER ORDERED that the Petition for Waiver filed by Northeast Rural Services, Inc. is GRANTED as described herein.

26. We direct the Universal Service Administrative Company to take further action in accordance with the terms of this Order.

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<sup>63</sup> See NRS Petition at 3; Letter from Ryan B. Palmer, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, FCC to Anthony Due, General Manager, Northeast Rural Services, Inc. (Mar. 6, 2019).

<sup>64</sup> Second NRS Petition at 3.

<sup>65</sup> See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8879-8800, paras. 92-93.

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

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau

## Attachment

## Lake County d/b/a Lake Connections

State	Support Amount	Covered Locations	Study Area Code	Disbursed Support
MN	\$3,491,280.18	8497	366110	\$ 1,653,759.33

## Northeast Rural Services, Inc.

State	Support Amount	Covered Locations	Study Area Code	Disbursed Support
OK	\$246,783.00	88	436112	\$92,337.74
OK	\$442,963.00	127	436142	\$154,667.58
OK	\$357,404.00	110	436114	\$133,728.38
OK	\$71,573.03	143	436145	\$22,068.28
OK	\$540,293.14	673	436147	\$166,590.28