

**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

MEMORANDUM OPINION AND ORDER

Adopted: August 24, 2015

Released: August 27, 2015

By the Commission: Commissioner Clyburn dissenting in part and issuing a statement.

I. INTRODUCTION

1. The Commission has before it three applications for review (Applications) filed by Rural Broadband Services Corporation (RBSC), Lennon Telephone Company (Lennon) and Last Mile Broadband LLC (Last Mile).¹ The Applications seek review of a Wireline Competition Bureau (Bureau) order denying their respective petitions for waiver of the financial and technical qualification requirements established by the Commission for the Connect America rural broadband experiments.² We uphold the Bureau's decision and accordingly deny these Applications.

II. BACKGROUND

2. In the *Rural Broadband Experiments Order*, the Commission adopted an objective methodology for selecting projects that would deploy robust broadband to consumers in price cap areas, and 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.³ As part of this post-selection review process, the Commission required provisionally selected bidders to provide, by December 19, 2014, 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.⁴ By February 3, 2015, provisionally selected bidders were required to submit a letter from an acceptable bank

¹ See Application for Review of Rural Broadband Services Corporation, Inc., WC Docket Nos. 10-90 and 14-259 (filed Feb. 18, 2015) (RBSC Application); Amended Application for Review of Decision to Remove Lennon Telephone Company from Rural Broadband Experiments and Petition for Waiver of Rural Broadband Experiments Audited Financial Statements Requirements of Lennon Telephone Company, WC Docket Nos. 10-90 and 14-259 (filed Feb. 9, 2015) (Lennon Application); Application for Review of Last Mile Broadband LLC, WC Docket Nos. 10-90 and 14-259 (filed Feb. 25, 2015) (Last Mile Application).

² See *Connect America Fund; Rural Broadband Experiments*, WC Docket Nos. 10-90 and 14-259, Order, 30 FCC Rcd 772 (Wireline Comp. Bur. 2015) (*Rural Broadband Experiments Waiver Order*).

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.* 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).

committing to issuing an irrevocable stand-by letter of credit (LOC) in the amount of the provisionally selected bid.⁵ On January 30, 2015, the Bureau denied petitions from 15 entities seeking waiver of the Commission's financial and technical information requirements and removed them from further consideration for funding; these entities included RBSC and Last Mile.⁶ The Bureau also removed Lennon from further consideration for failing to file the required financial information and not submitting a waiver request.⁷ Following the Bureau's decision, in conjunction with its Application for Review, Lennon requested a waiver of the audited financial statements requirement.⁸ Even though the Bureau had already announced on January 30, 2015, that RBSC was no longer under consideration for the rural broadband experiments, RBSC subsequently also sought a waiver of the requirement to provide a LOC.⁹ Similarly, after the Bureau had removed Last Mile from further consideration, Last Mile sought a 90- to 180-day extension to submit its LOC commitment letter or, in the alternative, a waiver of the requirement to provide the letter from a top 100 bank.¹⁰

III. DISCUSSION

3. Based on the record before us, we deny the Applications. We are not persuaded that the Bureau erred in denying the requested waivers. Accordingly, we decline to reinstate the petitioners as provisionally selected bidders for rural broadband experiments support.

4. We uphold the Bureau's decision not to grant the petitioners a waiver of the financial and technical information requirements for the rural broadband experiments.¹¹ Strict enforcement by the Bureau of the filing requirements adopted by the Commission was appropriate given the purpose of the rural broadband experiments and our commitment not to allow the rural broadband experiments to delay the offer of model-based support to price cap carriers. Contrary to the suggestion of the petitioners,¹² it was not arbitrary and capricious for the Bureau to apply those requirements evenly to all applicants, particularly given that there were so many other applicants that were able to meet the financial and technical information requirements without waiver. We find that it was appropriate for the Bureau to act expeditiously in order to finalize the list of areas that would be included and excluded from the Phase II offer of support.¹³

⁵ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787-88, para. 54.

⁶ *See generally Rural Broadband Experiments Waiver Order*, 30 FCC Rcd 772.

⁷ *See id.* at 775-76, para. 8.

⁸ Lennon Application.

⁹ Request for Waiver of Requirement for Letter of Credit of Rural Broadband Services Corporation, Inc., WC Docket Nos. 10-90 and 14-259 (filed Feb. 3, 2015) (RBSC Waiver Petition).

¹⁰ Last Mile Broadband LLC Motion for Extension of Time, WC Docket Nos. 10-90 and 14-58 (filed Feb. 2, 2015).

¹¹ *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*, 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.

¹² *See* Lennon Application at 4; RBSC Application at 14-16; Last Mile Application at 6-9.

¹³ The Bureau subsequently finalized the list of census blocks eligible for the offer of model-based support and announced the offers of support on April 29, 2015. *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, 30 FCC Rcd 3905 (Wireline Comp. Bur. 2015).

5. The Commission made an explicit decision when adopting the *Rural Broadband Experiments Order* to require provisionally selected bidders to submit three years of *audited* financial statements during the post-selection review process; by definition, this meant that entities with less than three years of operating history would be unable to meet that requirement.¹⁴ Had the Commission intended to allow newly formed ventures to compete for support in the rural broadband experiments, it would have explicitly made provision for that. Likewise, had the Commission intended to allow companies that were not audited in the ordinary course of business to compete for this experimental support, it would have adopted rules that would have allowed applicants to rely on other information to establish their financial qualifications.¹⁵ While the Commission permits privately held rate-of-return carriers to submit reviewed financial statements in their annual FCC Form 481,¹⁶ it did not adopt such a requirement for the rural broadband experiments. Against that backdrop, it was within the Bureau's authority to deny the requested waivers and apply the Commission requirements for the experiments to all applicants.¹⁷

6. As a steward of public funding, the Commission has a duty to ensure that those funds are used as efficiently and effectively as possible to accomplish our policy objectives. In the interest of establishing for these experiments a benchmark that offered both administrative efficiency and the opportunity to inform our policymaking efforts, we made a decision to target the finite rural broadband experiments budget to those entities that provide concrete and independently audited evidence of their financial capability to fulfill their commitment to build voice and broadband capable networks. We did so without prejudging what requirements might be adopted for Phase II more generally. Contrary to RBSC's argument, our objective was not merely to award support to the entity with the lowest cost-effectiveness score.¹⁸ While individual bidders may be disappointed by the resolution of their individual requests, we have achieved our primary objective in the experiment – to gain insights in a real-world environment regarding how particular requirements would impact potential bidders so that we could, in a timely manner, adjust and tailor our requirements, as necessary, for the larger Phase II competitive bidding process to follow.¹⁹

¹⁴ At its heart, RBSC's argument is that the Commission should ignore the requirement it adopted for the experiments in order to gain information regarding innovative and alternative means of providing service on Tribal lands, and that the Bureau's action effectively deprived the Commission of this information. While we are interested in learning how better to advance service in challenging areas of the country, we decline to grant the requested waiver merely to further that objective, without any assurance that the Fund is adequately protected.

¹⁵ For this reason, the Bureau denying the petitions for waiver was not a change in policy from what the Commission adopted. See Letter from David Cosson, counsel to RBSC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 14-259 and 10-90 (May 21, 2015) (arguing that *CBS Corp. v. FCC*, 785 F.3d 699 (D.C. Cir. 2015), supports reversing the Bureau because it did not explain a change in policy).

¹⁶ See 47 C.F.R. § 54.313(f)(2).

¹⁷ See 47 C.F.R. § 0.91(b) (delegating to the Wireline Competition Bureau the authority to act on requests for waiver of rules). Nor was it beyond the Bureau's authority to seek public comment on the petitions or act on requests for waiver of rules. In fact, the Commission's rules allow for oppositions and replies to be filed in response to pleadings. 47 C.F.R. § 1.45.

¹⁸ RBSC Application at 14.

¹⁹ Contrary to RBSC's claims, the rules adopted for the experiments do not dictate how the financial requirements will be implemented for the Phase II competitive bidding process. See RBSC Application at 6. The structure of the experiments was meant to inform the Commission on how this particular competitive bidding process functioned, and the Commission may draw on the lessons learned as it considers what rules to adopt in the future for the Phase II competitive bidding process.

7. Petitioners are under the mistaken impression that the Bureau failed to give each individual waiver applicant individual consideration.²⁰ That is not the case. The Bureau examined the particular showing made by each applicant and concluded, after consideration of the various arguments made by each petitioner, that the public interest would not be served by granting waivers to any of the petitioners.²¹ The fact that the Bureau chose for administrative convenience to rule on all of the pending waiver requests in a single order is no different than numerous other matters in which the Bureau, or the Commission for that matter, addresses matters raising similar factual circumstances in a single decision.²²

8. In RBSC's case, the only financial documentation it submitted was 10-year "Financial Projection Highlights" that provided only a projection of RBSC's expected growth over the time period. The fact that RBSC promised to provide quarterly unaudited financial statements in the future if awarded support for the project fails to persuade us that waiver of the requirements we adopted is appropriate in this case. Similarly, Last Mile failed to provide any concrete financial documentation or business plan for its proposed project, instead filing only an estimate of the costs of its proposed project and generally asserting that the county would provide an unspecified amount of additional funding for building backbone or middle-mile connectivity, would provide access to county assets, would provide assistance with state-owned resources, and would streamline the local permitting and inspection process.²³ We agree with the Bureau that both RBSC and Last Mile failed to provide any alternative evidence in support of their respective waiver petitions that would allow the Bureau to conclude before authorization of funding that RBSC or Last Mile was financially qualified to execute on a project of this magnitude.

9. We note that even had the Bureau not denied the requests for waiver of the financial information requirement from RBSC and Last Mile, neither would be eligible for reinstatement as a

²⁰ See RBSC Application at 10-11; Last Mile Application at 6-7.

²¹ There was no inconsistency in the Bureau's posting a FAQ regarding waiver requests for potentially interested bidders and its ultimate resolution of the matter, for it did consider each individual waiver request. Announcing that bidders that failed to meet the requirements established by the Commission should file requests for waivers was not tantamount to a conclusion that any waiver filed would automatically be granted.

²² See, e.g., *Universal Service High-Cost Filing Deadlines; Federal-State Joint Board on Universal Service*, WC Docket No. 08-71, CC Docket No. 96-45, Order, 29 FCC Rcd 3198 (Wireline Comp. Bur. 2014) (addressing two separate petitions for waiver of sections 54.307 and 54.802(a) of the Commission's rules); *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90 and 05-337, Order, 28 FCC Rcd 5733 (Wireline Comp. Bur. 2013) (dismissing without prejudice three separate petitions for waiver of various sections of the Commission's universal service rules); *Petitions for Waiver of Universal Service High-Cost Filing Deadlines; Grande Communications Networks, Inc. Petition for Waiver of Section 54.307(c) of the Commission's Rules; Advantage Cellular Systems, Inc. Petition for Waiver of Section 54.307(c) of the Commission's Rules; Decatur Telephone Company Petition for Waiver of Section 54.904(d) of the Commission's Rules; Range Telephone Cooperative, Inc. Petition for Waiver of the Commission's Universal Service Rules*, WC Docket No. 08-71, CC Docket No. 96-45, Order, 26 FCC Rcd 6187 (Wireline Comp. Bur. 2011) (addressing four separate petitions for waiver of high-cost universal service filings deadlines set forth in sections 54.307(c) or 54.904(d) of the Commission's rules); *Federal-State Joint Board on Universal Service; Allo Communications Petition for Waiver of Section 54.307(c) of the Commission's Rules; Bayland Communications, LLC Petition for Waiver of Section 54.904(d) Deadline for Submission of Annual Certification by Eligible Telecommunication Carrier Serving Lines in the Service Area of a Rate-of-Return Carrier to Receive Interstate Common Line Support; Columbus Telephone Company Petition for Waiver of Section 54.903(a) of the Commission's Rules; Great Lakes of Iowa, Inc. Petition for Waiver of the Commission's Universal Service Rules; HTC Communications, LLC, Petition for Waiver of Section 54.802(a) of the Commission's Rules; Pine Belt Cellular, Inc. Petition for Waiver of Section 54.314 and 54.904 of the Commission's Rules; Windy City Cellular, LLC Petition for Waiver of Universal Service High-Cost Filing Deadlines Section 54.307(c)*, CC Docket No. 96-45, WC Docket No. 08-71, Order, 26 FCC Rcd 6178 (Wireline Comp. Bur. 2011) (denying seven separate petitions for waiver of high-cost universal service support filing deadlines set forth in sections 54.307, 54.314, 54.802, 54.809, 54.903(a), and 54.904(d) of the Commission's rules).

²³ See Last Mile Waiver Petition at 4.

provisionally selected bidder because neither was prepared to meet the letter of credit requirement. As noted above, subsequent to their removal from further consideration as a provisionally selected bidder on January 30, 2015, both RBSC and Last Mile filed a request to waive or extend the deadline for the LOC commitment letter requirement. While we dismiss both of these waiver request as moot because both parties had already been removed from further consideration at the time the waiver requests were filed, we note that the filing of these requests further reinforces our view that these applicants were not prepared to meet the requirements established by the Commission for rural broadband experiments support.²⁴

10. As an independent and alternative basis for our decision, we conclude that RBSC has failed on the merits to establish that a waiver of the LOC requirement is appropriate in this case. RBSC contends that a waiver of the LOC requirement should be granted, citing the language in paragraph 68 of the *Rural Broadband Experiments Order* that recognized the need for greater flexibility regarding LOCs for Tribally-owned or -controlled bidders.²⁵ RBSC argues that it had entered into an agreement with the United Keetoowah Band of Cherokee Indians in Oklahoma (UKB Cherokee) that gave the Tribe control over aspects of the construction and operation of the broadband facilities to be constructed.²⁶ However nothing in the record before us establishes that UKB Cherokee owns or controls RBSC; merely coordinating or entering into an agreement with a Tribe is not grounds for relaxing the Commission's LOC requirement for a provisionally selected bidder that has proposed a project on Tribal lands. In concluding that situations involving Tribal Nations are best addressed on a case-by-case basis through the waiver process, the Commission acknowledged that Tribal Nations may be unable to obtain LOCs due in part to limitations on their ability to collateralize their real estate, for example.²⁷ Here, RBSC itself states that its inability to obtain a LOC in this instance was not the result of any issue with the Tribe, but instead was due to the fact that the banks contacted by RBSC required it to provide cash collateral to obtain the LOC.²⁸

11. Similarly, as an independent and alternative basis for our decision, we deny Last Mile's request for extension on the merits. Strictly enforcing the various deadlines associated with the rural broadband experiments is appropriate so that the Commission can complete its post-selection review of the provisionally selected bidders in the near future, and focus on other priorities for Phase II implementation.²⁹ The Commission made a decision to draw a clear line at accepting LOCs from the largest 100 U.S. banks and largest 100 non-U.S. banks for purposes of the rural broadband experiments. In doing so, it enlarged the pool of eligible banks that could be used from the top 50 (the approach taken in Mobility Fund Phase I) to the top 100.³⁰ Given our limited objective to learn from these experiments

²⁴ We also note that Last Mile failed to obtain certification of its proposed network design by a certified engineer by the relevant deadline, further reinforcing our view that it was not prepared to meet the Commission's requirements in a timely fashion. We uphold the Bureau's decision to deny its requested waiver of this requirement as well.

²⁵ See RBSC Waiver Petition at 4-5. See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8792, para. 68. In both Mobility Fund Phase I and Tribal Mobility Fund Phase I, flexibility regarding letters of credit was provided to (1) Tribes (federally-recognized American Indian Tribes and Alaska Native Villages); (2) Tribal consortia; and (3) entities that are more than 50 percent owned and controlled by a Tribe or Tribes. See *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, 27 FCC Rcd 4725, 4754, para. 95 n. 158; *Tribal Mobility Fund Phase I Auction Rescheduled for December 19, 2013; Notice and Filing Requirements and Other Procedures for Auction 902*, AU Docket No. 13-53, 28 FCC Rcd 11628, 11665, para. 119.

²⁶ RBSC Waiver Petition at 3-4.

²⁷ See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8792, para. 68.

²⁸ RBSC Waiver Petition at 3.

²⁹ See *Delta Radio, Inc. v. FCC*, 387 F.3d 897, 901(D.C. Cir. 2004) (stating that strict application of a rule may be justified by the gain in certainty and administrative ease, even if it results in some hardship).

³⁰ See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8790, para. 59.

about the best way to achieve our overarching policy goals through the selection of a relatively limited number of projects, we conclude it would not be productive at this time to engage in a case-by-case evaluation of various non-top 100 banks that provisionally selected bidders may wish to use for their LOCs.

12. Lennon also did not meet the specific requirements established for the purposes of the rural broadband experiments. Lennon mistakenly believed that because the Commission allows privately held rate-of-return carriers to submit reviewed financial statements in their annual FCC Form 481, it was permissible to submit reviewed statements for the rural broadband experiments as well. It did not even seek a waiver from the Commission's requirements for the experiments. Applicants were expected to familiarize themselves fully with the Commission's rules and requirements for the rural broadband experiments.³¹ We therefore uphold the Bureau's decision with respect to Lennon's participation in the experiment, while emphasizing that the Commission wants to encourage small entities to participate in the Phase II competitive bidding process. In the months ahead, we will take into account the arguments that Lennon and other parties have presented on various aspects of the experiments when considering rules that will make it possible for providers of all types to bid on support to upgrade and expand their networks in high-cost areas.

13. To conclude, upon review of the arguments presented by the petitioners in their Applications, we affirm the Bureau's decision and deny each Application on the grounds that the petitioners failed to establish good cause to waive the Commission's rules.

IV. ORDERING CLAUSES

14. ACCORDINGLY, IT IS ORDERED that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g), the Application for Review of Rural Broadband Services Corporation, filed February 18, 2015; the Amended Application for Review of Lennon Telephone Company, filed February 9, 2015; and the Application for Review of Last Mile Broadband LLC, filed February 25, 2015, ARE DENIED.

15. IT IS FURTHER ORDERED that the Request for Waiver of Requirement for Letter of Credit of Rural Broadband Services Corporation, Inc., filed Feb. 3, 2015, and the Last Mile Broadband LLC Motion for Extension of Time, filed Feb. 2, 2015, ARE DISMISSED and, as an independent and alternative basis for the decision, DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³¹ 47 C.F.R. § 0.406 ("Persons having business with the Commission should familiarize themselves with those portions of its rules and regulations pertinent to such business."). *See also, e.g., Universal Service Contribution Methodology*, WC Docket No. 06-122, Order, 26 FCC Rcd 11213, 11215-16, para. 7 (Wireline Comp. Bur. 2011) (declining to review rejection of company's late-filed revisions to form which were caused by company's misunderstanding of form instructions, because "[b]usinesses have a responsibility to familiarize themselves with the rules and regulations that are relevant to their industry").

**STATEMENT OF COMMISSIONER MIGNON L. CLYBURN
APPROVING IN PART AND DISSENTING IN PART**

Re: *Connect America Fund*, WC Docket No 10-90; *Rural Broadband Experiments*; WC Docket No. 14-259.

While I believe this Order reasonably rejects relief requested by Rural Broadband Services Corporation and Last Mile Broadband LLC, I disagree with the decision to deny the application for review of Lennon Telephone Company (“Lennon”) – a small, privately-held rate of return company that submitted a bid in the rural broadband experiments and was selected as a provisional winner. In denying Lennon’s request, the Commission applies our requirements regarding the submission of financial statements in a manner that is not only unnecessarily unyielding, but fails to take into account our ability to protect the integrity of the universal service fund (and to recoup any funding not used as intended) simply by withholding universal service funding to Lennon. For this reason, I respectfully dissent in part.

Lennon has been in business since 1946 and has built and operates a network with the assistance of universal service support. Like many rate-of-return carriers, the nearly 70-year-old company submits reviewed financial statements annually consistent with FCC Form 481 to receive its high cost universal service support. In authorizing rural broadband experiments, the Commission required winning bidders to submit financial information to ensure that “each selected applicant has demonstrated that it has the technical and financial qualifications to successfully complete the proposed project within the required timeframes and is in compliance with all statutory and regulatory requirements for the universal service support that the applicant seeks.”¹ In response, Lennon submitted reviewed financial statements consistent with FCC Form 481,² yet the Wireline Competition Bureau “removed Lennon from further consideration for failing to file the required financial information and not submitting a waiver request.”³

So, reviewed financial statements are sufficient for rate-of-return carriers to receive approximately \$2,000,000,000 in universal service annually, but not sufficient to provide \$60,000 in support to the same carrier for a rural broadband experiment? This not only defies logic, it ignores the fact that since Lennon Telephone receives universal service every month, the Commission has ample means to address its stated policy concerns.

The Order states that “the Commission wants to encourage small entities to participate in the Phase II competitive bidding process,”⁴ but I fear that today’s decision will deter just that because of the Commission’s unwillingness to make adjustments even when the integrity of the universal service fund can be protected. Indeed, audited financial statements are expensive and are otherwise unnecessary for small, privately-held rate-of-return companies to receive universal service support.

¹ 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, para. 52 (2014).

² See *Instructions for Completing FCC Form 481*, OMB Control No. 3060-0986 (High-Cost) at 6. “Section 54.313(f)(2) requires privately held rate-of-return ETCs, beginning in July 1, 2013, and annually thereafter, to file financial reports” and explains that certain privately held rate-of-return ETCs may satisfy this requirement by providing “either: (1) a copy of their financial statement which has been subject to review by an independent certified public accountant; or (2) a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers, with the underlying information subjected to a review by an independent certified public accountant and accompanied by an officer certification that: (a) the carrier was not audited in the ordinary course of business for the preceding fiscal year; and (b) that the reported data are accurate.” See <http://www.usac.org/res/documents/hc/pdf/forms/FCC-Form-481-Instructions.pdf> (last visited August 11, 2015).

³ See Order at para. 2.

⁴ See Order at para. 12.

In denying Lennon's application for review, we also risk leaving consumers, who live in hardest-to-serve areas, in digital darkness with no access to broadband. While I appreciate that strict adherence to the rules may be appropriate for entities that do not currently receive universal service support because the Commission may be unable to recoup funding, that is not the case here. Such inflexibility fails to further our universal service goals or objectives.