In the Matter of the Rural Broadband Experiments:
AirNorth Communications, Inc., provisional winner,

_____________________________________________________/  

PETITION FOR RECONSIDERATION OF
DENIAL OF WAIVER OF THREE YEARS OF AUDITED
FINANCIAL STATEMENTS

AirNorth Communications, Inc. (AirNorth) was incorporated in Michigan in March 2014 and has operated a wireless internet network since June 2014. In January 2015, the Michigan Public Service Commission granted AirNorth its CLEC license. The company’s ETC Designation is pending before the MPSC. AirNorth’s tariff has been filed and we are currently negotiating an Interconnect Agreement with AT&T. In the very near future, AirNorth will collocate in the City of Cheboygan Central Office and offer high speed broadband internet service (up to 100 MB) to Cheboygan County residents. Not a bad short time history for a start-up.

In support of its Grant application, AirNorth submitted certified network design information on December 19, 2014, as required by the Commission’s Post Award procedures. Because AirNorth is a start-up, it lacks three (3) years of audited financial statements. As such, AirNorth submitted alternative financial information to demonstrate its ability to comply with the Grant’s obligations. AirNorth relied upon the FCC’s representation, in the Rural Broadband Experiments Order and elsewhere, that the Commission would consider such information on a case-by-case basis.
To this end, AirNorth submitted compiled financial statements including notes prepared by a Certified Public Accounting firm. These statements included a balance sheet demonstrating significant assets, including over $300,000 in cash.

AirNorth’s timely Petition for Waiver was denied in the FCC’s Order of January 30, 2015. This Order indicated the FCC’s decision not to engage in the case-by-case review it previously represented and upon which AirNorth and at least fourteen (14) other petitioners relied. Instead, the Order removed from consideration all provisional awardees, without distinction, that did not submit three (3) years of audited financial statements. This change of course directly contradicts the Commission’s prior representation that Petitions be reviewed on a case-by-case basis.

Notwithstanding the January 30, 2015 Order’s clear error in this regard, AirNorth timely submitted its Letter of Credit Commitment Letter on February 3, 2015. AirNorth will further submit its ETC designation on May 5, 2015. AirNorth remains prepared to submit its Letter of Credit and Legal Opinion concerning Section 541 property.

The Commission noted in its January 30, 2015 Order that it would open up the census blocks conferred upon now-discarded provisional awardees, including AirNorth, to qualified bidders (i.e. bidders with three (3) years of audited financial statements). The Commission’s Order in this regard keeps all start-ups, including AirNorth, on the sidelines without individual, merit-based consideration, in favor of the old regime—a regime that long ago turned its back on the very communities the Broadband Experiment Grants are designed to support.

This treatment also violates the Competitive Neutrality principals adopted by the FCC in 1997, relating to universal service. As you know, the FCC’s USF rules should not “unfairly
advantage nor disadvantage one provider over another, and neither unfairly favor one technology over another.” (Rural Cellular Assn. v. FCC, 488 F.3d 1095 (D.C. Cir. 2009)). Clearly, without considering petitioners on a case-by-case basis, the January 30, 2015 Order unfairly advantages/favors old providers and technology over new startups and network designs.

It is unlikely that any other entity will submit a bid on the eighteen (18) census blocks provisionally awarded to AirNorth. As a result, approximately 50,000 residents, believing AirNorth would finally bring high speed broadband internet service to their homes, will again be left out of the President’s promise of connectivity.

AirNorth will continue to apply for FCC grants. Please know that our company and community urge you to modify the Phase II grant program. We urge you to conduct the case-by-case reviews represented in the Rural Broadband Experiments Order. We ask that you not universally discriminate against start-ups. We urge you to uphold the law provided in Rural Cellular Assn.

Further, we respectfully request reconsideration of the January 30, 2015 Order denying AirNorth’s Petition for Waiver. We respectfully request you review the financial information submitted by AirNorth in support thereof, and find that it financially capable of fulfilling the Grant obligations.

Thank you for your consideration of this request.
Respectfully submitted,

/s/ Kevin L. Tucker
Kevin L. Tucker
Vice President, General Counsel
AirNorth Communications, Inc.

Dated: February 9, 2015