

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
_____)	

**LEACO RURAL TELEPHONE COOPERATIVE, INC.
REQUEST FOR LIMITED WAIVER AND EXTENSION OF
MOBILITY FUND PHASE I PUBLIC INTEREST OBLIGATIONS**

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Summary

Leaco is a rural telecommunications provider serving southeastern New Mexico. Leaco successfully bid for approximately \$6.7 million in Mobility Fund Phase I (“MFI”) support to provide 3G mobile voice and broadband services to over 11,000 unserved road miles (at an average of only \$597 per mile) in some of the most rural areas of the country. By upgrading and optimizing its existing wireless network, Leaco has completed construction in five (5) of its twelve (12) supported census tracts, and is nearing completion for a sixth census tract. Leaco, however, has encountered significant delays beyond its control in completing network construction in the remaining six (6) census tracts. These delays resulted from, among other things: (1) the loss of key management personnel in the early stages of the project; (2) lengthy federal permitting and approval processes; (3) unexpected additional environmental processing; and (4) problems with vendors. These delays, in combination, will prevent Leaco from meeting the two-year deadline for constructing and drive testing a 3G network in the six (6) census tracts despite Leaco’s steady and aggressive efforts to do so. Leaco, therefore, seeks a 180-day extension of the construction and reporting deadline, until December 5, 2015, to allow Leaco to meet its applicable public interest obligations.

There is good cause to grant the requested relief, as the public interest will be well served by Leaco’s completion of its MFI projects. Grant of the requested relief will fulfill the Commission’s goal of accelerating the deployment of mobile broadband services to as many road miles as possible in unserved areas. Denial of the requested relief will delay the deployment of mobile services and materially harm Leaco. Leaco is working diligently to complete its 3G network and respectfully requests a limited waiver of the Commission’s rules to allow it a reasonable amount of time to complete this work and fulfill the Commission’s mobile broadband expansion goals.

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Leaco Rural Telephone Cooperative, Inc. (“Leaco”), pursuant to Section 1.3 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”),¹ hereby requests a limited waiver and extension of the two-year deadline for Leaco to construct a third generation (“3G”) network and submit drive test data reports for certain census tracts for which Leaco was a winning bidder in Auction 901 for Mobility Fund Phase I (“MFI”) support.² Specifically, Leaco requests that the Commission waive Sections 54.1006(a) and (c) of the rules and extend the construction and applicable reporting deadline until December 5, 2015, 180 days from the current June 8, 2015, construction and reporting deadline. As explained in greater detail herein, Leaco has completed network construction and successfully deployed 3G services to at least 75% of the previously unserved road miles in five (5) of the twelve (12) census tracts for which Leaco was authorized to receive MFI support.³ Unfortunately, a series of significant delays beyond Leaco’s control have caused Leaco to fall behind in its schedule for completing

¹ 47 C.F.R. § 1.3.

² See 47 C.F.R. §§ 54.1006(a) & (c).

³ Leaco expects to complete network construction to provide 3G service to previously unserved road miles in a sixth census tract by early May 2015.

construction in, and submitting drive test data for, the following six census tracts: T35005001102, T35005001200, T35005001400, T35015000700, T35015000800, and T35015000900 (the “Waiver Tracts”).⁴ Accordingly, Leaco respectfully requests a 180-day extension of the June 8, 2015, performance deadline.

Leaco requests expeditious Commission action on this request so that Leaco can plan accordingly and make reasonable business decisions regarding the deployment of its network in the Waiver Tracts.

I. Introduction and Background

Leaco is a rural telephone company that provides high-speed broadband Internet services, and wireline and wireless telecommunications services to customers throughout rural areas in southeastern New Mexico. Leaco participated in Auction 901, and on October 3, 2012, the FCC announced that Leaco was a winning bidder for MFI support to construct a 3G wireless network to provide coverage to previously unserved road miles in 12 census tracts in New Mexico.⁵

Leaco bid to receive approximately \$6.7 million in MFI support to provide mobile voice and broadband services to over 11,000 unserved road miles in some of the most rural and underserved areas of the country. Leaco’s support is among the lowest dollar per covered mile average of the MFI winning bidders, at an average of only \$597 per mile. Leaco’s winning bids were more than 50% more cost effective than most of the MFI winning bids. Leaco’s average dollar per mile support is a mere fraction, less than two percent, of the highest average dollar per mile winning bidder. In short, Leaco’s MFI projects are a bargain for the FCC and public.

⁴ These Waiver Tracts correspond to Study Area Codes (“SACs”) 498001, 498002, 498004, 498006, 498007, and 498008, respectively.

⁵ See *Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901*, Public Notice, AU Docket No. 12-25, 27 FCC Rcd 12031 (2012) (“*Auction 901 Closing Public Notice*”).

On June 7, 2013, the FCC authorized Leaco to receive its initial disbursement of MFI support.⁶ This established June 8, 2015, as the two-year deadline for construction and drive testing of Leaco's 3G network in the supported census tracts ("Completion Deadline").⁷

In its Auction 901 Long Form Application, Leaco set forth milestones with associated completion dates for the MFI projects specifying that Leaco planned to construct and deploy the 3G network in four (4) phases well ahead of the required two-year deadline for completing construction.⁸ Phase 1 included Radio Frequency ("RF") design, site development, and switch implementation; Phase 2 included tower construction and site deployment through cell site construction; Phase 3 included network turn-on, network testing, network optimization, and back-office integration.⁹ Phase 4 is the commercial launch of the 3G network, consisting of operations and maintenance.¹⁰

After becoming a winning bidder for MFI support, and prior to the receipt of any MFI funds, Leaco immediately began planning and engineering work to ensure that its 3G network would provide coverage to the required percentage (or greater) of unserved road miles in all census tracts for which the FCC awarded Leaco MFI support. Initially, this work focused on moving from a hosted network to a self-provisioned network, which involved switch and other equipment upgrades to Leaco's existing core network and periphery platform so that Leaco could efficiently deploy 3G services. By October 2013, Leaco had completed the upgrade of its core

⁶ *See Mobility Fund Phase I Support Authorized For Fourteen Winning Bids*, Public Notice, AU Docket No. 12-25, 28 FCC Rcd 8292 (2013).

⁷ *See* 47 C.F.R. § 54.1006(a).

⁸ *See* Leaco Rural Telephone Cooperative, FCC Form 680, File No. 0005476186 (filed Nov. 5, 2012)("Long Form Application").

⁹ *See id.*

¹⁰ *See id.*

network and the RF optimization at existing cell sites in five of its 12 census tracts,¹¹ thereby completing construction of a 3G network and deploying 3G services to the unserved road miles in these census tracts. In addition to the five census tracts in which Leaco has already deployed a 3G network, Leaco expects to complete its 3G network in a sixth census tract in May 2015¹² (collectively, these six census tracts are referred to as the “On Target Tracts”). Leaco is working diligently to complete drive testing for the On Target Tracts by the June 8, 2015, Completion Deadline.

Despite the expected successful completion of the MFI projects for the On Target Tracts, Leaco is behind schedule, but still diligently and aggressively progressing through Phase 2 of its 3G network construction schedule for the remaining six Waiver Tracts. Leaco does not expect to be able to complete construction and drive testing of the Waiver Tracts by the June 8, 2015, Completion Deadline. Leaco has encountered numerous significant delays outside of its control that have severely impacted its ability to remain on schedule for the June 8, 2015, Completion Deadline for the Waiver Tracts.

Unlike most of the On Target Tracts that are primarily network upgrade and RF optimization projects, the MFI projects in the Waiver Tracts are greenfield construction projects, requiring construction of cell sites on 14 towers (five of which are new tower constructions and three of which are modifications of existing towers), and installation of backhaul transport to Leaco’s core network.¹³ These greenfield projects in the Waiver Tracts necessitated extensive

¹¹ Leaco has deployed 3G service in census tract T35015000401 (SAC 498005) in Eddy County, and census tracts T35025000701 (SAC 498009), T350250007012 (SAC 498010), T35025000900 (SAC 498011), and T35025001100 (SAC 498012) in Lea County.

¹² Census tract T35005001300 (SAC 498003) is in Chaves County.

¹³ One of the On Target Tracts, T35005001300, also is a greenfield project, but it depends only on the construction of one site. Furthermore, drive testing of this tract is not impacted by site construction in any adjoining tracts.

early involvement by Leaco's key executive personnel in network planning and site development, followed by a steady progression of site construction. Leaco's anticipated project schedule provided a cushion for reasonably expected minimal delays, but the aggressive two-year MFI performance obligation for 3G projects does not allow for any material delays.

Unfortunately, as discussed below, the abrupt and unexpected departure of two of Leaco's key executive personnel, who were critical for the progression of work to be performed in Phase 1 of the MFI projects for the Waiver Tracts, critically hindered the project schedule from the outset. This left little, if any, room for further delays in order to remain on target for the Completion Date. After concerted efforts to address the loss of key executives and resume and complete work on the MFI projects in the Waiver Tracts on time, however, Leaco encountered further delays beyond its control. These delays included unusually long timeframes for obtaining necessary governmental approvals, some of which are still pending, as well as problems with vendors. As a result of this cascading series of delays, Leaco will not be able to complete construction of most of the critical sites identified on Exhibit 1 by the Completion Deadline. Due to the overlapping coverage of many sites in adjoining census tracts, Leaco also will not be able to drive test the Waiver Tracts by the Completion Deadline.

As demonstrated herein, grant of the requested limited waiver and extension of time is warranted and will serve the public interest by allowing Leaco to complete construction of its 3G network in the Waiver Tracts to provide much needed mobile voice and broadband services to subscribers and roamers in these rural areas.

II. Circumstances Beyond Leaco's Control Delayed the MFI Projects in the Waiver Tracts.

Although Leaco has been consistently and diligently working to construct and deploy a 3G network since the FCC awarded Leaco MFI support in October 2012, special circumstances

outside of Leaco's control have caused a series or combination of significant delays, which have had the cumulative impact of causing Leaco to be unable to meet its MFI Completion Deadline for the Waiver Tracts. As more fully set forth herein, Leaco has experienced significant delays due to the abrupt departure of key executive personnel, lengthy government approval processes necessary for site construction, environmental processing, and problems with vendors. These delays constitute special circumstances outside of Leaco's control, warranting deviation from the Commission's rules and grant of the requested limited waiver and extension.

A. The unexpected departure of key executive level personnel delayed the MFI projects in the Waiver Tracts.

Well after the announcement that Leaco was a winning bidder for MFI support, but near the time that the FCC authorized Leaco to receive its first disbursement of MFI support, key personnel who were integral to the first phases of Leaco's MFI projects in the Waiver Tracts departed abruptly and unexpectedly from the company. These departures had a critical impact on the overall schedule for completion of construction and deployment of the 3G network in the Waiver Tracts, but the immediate impact was to delay Leaco's progress on the following Phase 1 work: RF design, network design, site development and acquisition, and the contractual arrangements necessary to accomplish the foregoing.

Specifically, at the end of March 2013, Leaco's Chief Executive Officer ("CEO"), Laura Angell, suddenly retired after giving only 30 days' notice.¹⁴ Ms. Angell's abrupt departure left Leaco without a successor who could make executive level decisions relating to contractual obligations. The CEO's unexpected departure disrupted all business operations, which included Phase 1 work on network design for the MFI projects, and directly impacted the company's ability to enter into critical MFI contractual arrangements on schedule. Although Leaco

¹⁴ Laura Angell was listed as "Key Management Personnel" on Leaco's Long Form Application.

appointed an interim CEO, Dale Snider, on June 10, 2013, the disruption to the critical first step of designing the network had already pushed back the Leaco timeline for entering into MFI contractual arrangements.

In addition, in mid June 2013, only days after the FCC authorized Leaco to receive its first disbursement of MFI funding, Leaco suffered another critical blow to the Phase 1 work on the MFI projects. Specifically, on June 12, 2013, Leaco's Chief Technology Officer ("CTO"), Eldon Prax, abruptly and unexpectedly resigned. Mr. Prax was Leaco's only employee with the comprehensive RF engineering knowledge and experience necessary to make many fundamental planning and design decisions for the MFI projects. He also was the principal employee responsible for the overall development of the engineering plans and the implementation of the first stages of the projects. The CTO's sudden departure brought the foundational aspects of the Phase 1 work to a grinding halt and ultimately delayed work on the network design and site planning by several months.

Following the CTO's departure, Leaco worked diligently to fill the management and experiential gaps, training members of its engineering team, and engaging consultants and project managers, so that Leaco could resume work on the Phase 1 engineering aspects of the MFI projects.¹⁵ Leaco developed the RF proficiency of one member of its engineering team, Rich Soutar, with an RF training course in August 2013, so that he could assume the RF design responsibilities that the CTO had previously performed. In October 2013, Leaco named Sid Applin as CEO and Dale Snider became CFO/COO. In November 2013, Leaco engaged Coyote

¹⁵ Since Leaco is a small, rural telecommunications provider, the abrupt departure of two individuals integral to its MFI projects caused major setbacks that, in turn, eliminated any cushion built into the projects' timelines.

Solutions Group (“Coyote”), an engineering consultant, to perform site assessments and development, another responsibility that the CTO would have handled or overseen.

From November 2013 through February 2014, Leaco’s Phase 1 work culminated as Leaco’s RF engineer coordinated RF design with Coyote’s site analysis for tower acquisitions and builds, with these efforts guided by input from the company’s switch and equipment vendor, Huawei. The Phase 1 RF design, site development, and switch implementation work for the Waiver Tracts necessarily built on the upgraded core network that Leaco had completed in September 2013 under the direction of another Leaco engineer, David Jimenez.¹⁶ From February through May 2014, Leaco completed the RF propagation studies that would determine optimal placement of tower sites, began ordering and receiving Huawei microwave gear for cell sites,¹⁷ and made final determinations about the necessary number and locations of cell sites and associated equipment. In June 2014, Leaco was ready to proceed with Phase 2 work, tower construction and site deployment, but at this point, Leaco was already nine months behind its schedule of planned milestones identified in its Long Form Application.¹⁸

Although Leaco was already behind its own schedule for construction, Leaco believed it could still meet the June 8, 2015, Completion Deadline because in its original project schedule, Leaco anticipated it would need nine months to complete the remaining phases of the MFI projects after completing Phase 1 work. Unfortunately, however, this has not proved to be the

¹⁶ Importantly, it was the optimization of the upgraded core network that enabled Leaco to complete construction of the 3G network in most of the On Target Tracts by October 2013.

¹⁷ This equipment was ordered with assigned frequencies based on an assumption that there would be no conflict when frequency coordination was conducted. By doing this, Leaco has been able to speed up the construction process, but Leaco has taken a business risk that it might need to re-order equipment if there are problems with frequency coordination results.

¹⁸ Leaco’s planned start date for Phase 2 work on tower construction and site deployment was September 1, 2013. *See* Long Form Application.

case, primarily due to delays encountered in obtaining certain government approvals, additional time required for environmental processing, and a number of vendor problems.

B. Lengthy government approval processes and environmental processing have delayed the MFI projects in the Waiver Tracts.

In addition to the delays in Phase 1 caused by the departure of Leaco's key personnel, Phase 2 construction of certain sites within the Waiver Tracts also has been delayed by unexpected, unusually long processes to obtain federal approvals required before Leaco can proceed with cell site construction, tower construction, or tower modification. Leaco has experienced unusual delays in obtaining necessary approvals from the U.S. Bureau of Land Management ("BLM") for sites on federally controlled land. Additional environmental processing required under the National Environmental Policy Act ("NEPA") and FCC rules¹⁹ also has delayed construction.²⁰

1. BLM Approval Delays

Four of the 14 cell sites required for the MFI projects in the Waiver Tracts are, or will be, on towers located on land under the control of the BLM. Specifically, BLM approval is required for the cell sites at Mile Marker 4, Illinois Camp, Indian Basin, and WIPP.²¹

In June 2014, when Leaco was ready to begin Phase 2 work, Leaco engaged a contractor, Ashley Automation ("Ashley"), to handle all civil construction, electrical work, permitting

¹⁹ 42 U.S.C. § 4321 *et seq.*; *see* 47 C.F.R. § 1.1307.

²⁰ Construction at the Hagerman Cutoff site in Chaves County, and the Hope site in Eddy County, also was delayed as a result of delays in obtaining zoning approval due to a lack of a quorum at scheduled county zoning hearings in October 2014.

²¹ *See* Exhibit 1. BLM approval is required for the sites at Mile Marker 4, Illinois Camp, Indian Basin, and WIPP because these sites involve either the construction of new towers with new cell sites or the addition of cell sites to existing towers located on federal land in New Mexico. The WIPP and Mile Marker 4 sites are located in census tract T35015000800. The Indian Basin site is located in census tract T35015000700 and the Illinois Camp site is located in census tract T35015000900.

(including BLM permitting), and cell site construction in the Waiver Tracts. As explained in greater detail below, however, it became clear to Leaco in August 2014 that Ashley was not capable of handling the turn-key project management of the MFI projects for which it was hired, and Leaco took immediate steps to keep the MFI projects moving forward.

Notably, in September 2014, Leaco requested that its engineering consultant for site assessment and development, Coyote, begin working with the BLM for approval to access and place equipment on the existing towers at Indian Basin and WIPP, and also that Coyote handle the leasing process with BLM for these sites. Around the same time, Tower Ventures, the tower company that was engaged to construct two new towers at Illinois Camp and Mile Marker 4, also began working with the BLM for similar approval and leases. Leaco, through Coyote, and Tower Ventures applied for BLM approval as soon as reasonably possible, given the timeframe when site determinations had been made during Phase 1 of the MFI projects for the Waiver Tracts and the subsequent start of the site deployment work in Phase 2, which unfortunately had been delayed by the vendor problems noted above.

Although the BLM approval process can take as long as 45-60 days, particularly if the approval involves construction of a new tower, significantly less time is expected for approval of construction of cell sites on existing towers that already have BLM approval. The BLM approval process in Leaco's case, however, took *nearly twice as long as expected* for the Indian Basin and WIPP sites. Leaco applied for BLM approval to construct cell sites on the existing towers at Indian Basin and WIPP on October 1, 2014, and did not receive approval from the BLM until 114 days later on February 23, 2015.

The BLM approvals required for the new tower constructions at the Illinois Camp and Mile Marker 4 sites are still pending. Tower Ventures filed the BLM application for Mile

Marker 4 on October 10, 2014, and the BLM application for Illinois Camp on December 6, 2014. During the BLM's review of the Mile Marker 4 site, the BLM determined that the tower's proposed location was near the perimeter of an area encircling a native burial ground site. The BLM conveyed this finding to Tower Ventures on or about October 28, 2014. To avoid an impact on this tribally significant area, Tower Ventures agreed to move the tower site one half of a mile away from the originally proposed site to a new site location under BLM control. The review of the revised site remains pending with the BLM.

On January 7, 2015, the BLM acknowledged that it had lost the Illinois Camp application. Tower Ventures re-submitted the Illinois Camp application on that same day.

To date, the BLM approval process has taken more than four months for Illinois Camp and six months for Mile Marker 4.²² Leaco cannot proceed with construction of these sites absent BLM approval, and these sites are critical for coverage in a number of the Waiver Tracts. This is a circumstance beyond Leaco's control, but Tower Ventures will proceed with construction of the Mile Marker 4 and Illinois Camp towers as soon as it permitted to do so.

2. Additional Time for Environmental Processing

In addition to Phase 2 construction delays caused by the unexpectedly lengthy BLM approval process for the four sites discussed above, additional environmental processing has delayed construction of the Hagerman Cutoff site.²³ Tower Ventures will construct a new "build-to-suit" tower at the Hagerman Cutoff site. As part of its required NEPA review, Tower

²² On March 31, 2015, the BLM issued a request to Tower Ventures that Leaco submit an application for these two sites even though Tower Ventures has understood from the BLM that Leaco would be covered under the approval that the BLM provides to Tower Ventures. Leaco submitted an application for both the Illinois Camp and Mile Marker 4 sites that same day. It is not clear at this time whether the BLM request for applications from Leaco will cause any further delays.

²³ See Exhibit 1.

Ventures' environmental consultant, BioMap, LLC ("BioMap"), performed an investigation of the property on October 1, 2014, and prepared a preliminary environmental assessment for the Hagerman Cutoff site. BioMap found that construction of the site could potentially affect the habitat of the lesser prairie-chicken, a species listed by the U.S. Fish and Wildlife Service ("FWS") as threatened under the Endangered Species Act of 1973.²⁴

On November 4, 2014, BioMap recommended that Tower Ventures enroll in the Western Association of Fish and Wildlife Agencies ("WAFWA") mitigation program, which enrollment Tower Ventures completed on December 18, 2014, with fees paid into a mitigation account. On February 12, 2015, a staff biologist from the New Mexico Department of Game and Fish ("NMDGF") conducted a field survey to determine the assessment area buffer impacts since the actual site is located within an area that had been previously mitigated. On February 18, 2015, Tower Ventures accepted the mitigation determination and its mitigation account was debited, completing the preemptive mitigation for the potential impact on the habitat of the lesser prairie-chicken. The Lotis Engineering Group prepared the full Environmental Assessment ("EA") for Tower Ventures and filed the EA with the FCC on February 24, 2015.²⁵

The FCC must now issue a Finding of No Significant Impact ("FONSI") and approve the Antenna Structure Registration ("ASR") prior to Tower Ventures commencing any work at the site. Tower Ventures will proceed, however, with construction of the tower at Hagerman Cutoff as soon as it receives the necessary FCC approvals.²⁶

²⁴ 16 U.S.C. § 1531 *et seq.*

²⁵ *See* ASR File No. A0916281.

²⁶ The FCC provided national public notice of the Hagerman Cutoff site on March 16, 2015, and the notice period apparently runs until April 27, 2015. Tower Ventures expects the FCC to issue a FONSI within a few days of the conclusion of this notice period.

C. Unexpected problems with vendors have delayed construction in the Waiver Tracts.

Unexpected difficulties with vendors also have delayed construction at various sites in the Waiver Tracts. These difficulties have impacted both the overall timeframe and specific points in the timeline, but all add up to compounding delays. In one instance, a vendor's inability to perform the contracted responsibilities caused delays to the initial work in Phase 2, but in other instances Leaco has incurred delays later in the Phase 2 schedule waiting for vendors to take steps that are necessary for Leaco to be able to proceed with construction. Yet, Leaco has had little ability to control some of these vendors and has been forced to replace others.

As noted above, in June 2014, Leaco engaged Ashley to provide a turn-key project management solution for the Phase 2 construction work on the MFI projects in the Waiver Tracts. This included civil construction, electrical installations, cell site construction, and governmental approvals. Ashley had completed some site survey work, but it was having difficulty completing an initial cell site construction at the Cherry Wells switch site. Although the Cherry Wells site was not an MFI project site, the site is critical to the MFI projects in the Waiver Tracts because it is a switch location.

After providing Ashley with an extended period of time to complete the Cherry Wells site, Leaco learned in late August 2014 that the Ashley tower crew was not properly certified and also that the project manager that Ashley had assigned to Leaco's MFI construction projects was no longer with the company. Despite efforts to salvage the contract and not lose forward momentum into Phase 2,²⁷ Leaco determined that Ashley was not equipped to perform the

²⁷ As noted above, Leaco had taken some interim steps to keep the construction timeline moving, such as directing Coyote to start the BLM approval process for the Indian Basin and WIPP sites.

services required to satisfy the MFI projects. Accordingly, in September 2014, Leaco was forced to sever the relationship with Ashley.

Leaco, however, quickly engaged another contractor, Rogers Consulting, in October 2014, to manage the cell site and civil construction work for the MFI projects. Leaco also assigned the tower acquisition responsibilities to Coyote, and the electrical work to Strong Power Electric LLC (“Strong Power”). Despite proactive efforts to keep the MFI projects moving toward completion, Leaco had nonetheless suffered yet another delay to Phase 2 construction, and ultimately another delay in the overall timeline for completing the MFI projects.

Other delays due to problems with vendors have occurred at later points in Phase 2 of the construction schedule, but they are still significant in that the vendor problems essentially put a hold on completion of cell site construction at various sites needed to complete the MFI projects in the Waiver Tracts. For example, Leaco has been waiting more than four months for American Tower to issue a Notice to Proceed (“NTP”) so that Leaco can begin cell site construction on the existing towers at the Lakewood and White City sites. Both towers require structural modification, and Leaco submitted applications to American Tower in November 2014 with complete documentation²⁸ and payment for the modifications.²⁹ An NTP for a tower requiring modification should typically be issued within 90 days after the application is received. To date, almost five months after applications were submitted, however, Leaco has not received an NTP from American Tower for these two sites and American Tower has not been communicating about the status of the modifications. Leaco has no ability to propel this national vendor

²⁸ A requesting tenant typically must submit copies of construction drawings, locally required permits, pre-construction study measurements, information on FCC and FAA approval, a site construction schedule, and information on the approved construction contractor before the tower owner will issue an NTP with the cell site construction.

²⁹ See Exhibit 1. The Lakewood application was submitted on November 19, 2014. The White City application was submitted on November 20, 2014.

forward. Once it receives the NTPs, however, Leaco is prepared to move forward expeditiously with cell site construction.

The MFI projects also have suffered delays as a result of problems with Leaco's electrical contractor, Strong Power. Problems with this contractor have resulted in lengthy delays in obtaining state inspections, and permits, resulting in a failure to timely turn up electric power and transport at the Queen, High Lonesome, and Twin Towers sites.³⁰ Leaco has engaged a new vendor, Triple S Electric, for work related to electric power at other MFI sites, however, because the permitting process for power was initiated through Strong Power for the Queen, High Lonesome, and Twin Towers sites, Leaco would suffer further delays to start over with permitting at these three sites. Accordingly, Leaco continues to press Strong Power to complete the permitting process and power turn-up for these three sites, while working with its new electrical vendor at other sites.

D. Substantial construction work remains to be completed, which Leaco will complete by the extended deadline.

None of the 14 MFI sites for the Waiver Tracts is complete. A limited extension, however, will provide Leaco with the time needed to complete Phase 2 construction of all 14 sites, as well as complete the Phase 3 work for these sites. Leaco also anticipates that the extension will allow Leaco to drive test the Waiver Tracts, and submit the necessary coverage data. Leaco now has in place a strong, stable management and technical team. Furthermore, Leaco is now working with numerous reliable vendors who have been making great strides to complete the MFI project work. Leaco has expended significant resources and efforts to get to

³⁰ Leaco will provide additional information regarding these problems and delays upon FCC request.

this point, and is on the cusp of being able to complete many if not all of its MFI projects quickly.

The following narrative summarizes the status of the various MFI sites and work to be completed. Leaco can provide periodic updates to the FCC as work progresses.

Leaco has nearly completed Phase 2 construction for three sites, Queen, High Lonesome, and Twin Towers.³¹ Phase 2 work still to be completed for these sites includes completion of state electrical inspections and turn up of power from the electrical utility company, as well as the installation and turn up of the transport from the sites back to the core network. This transport requires either installation of a fiber connection or use of a licensed microwave link. Licensing for microwave transport from High Lonesome to the Leaco core network is complete, but installation of the transport is necessary. Leaco is working on construction of a fiber link for transport from the Twin Towers site. Licensing for microwave transport from Queen back to the core network is complete, but installation of the transport is necessary, as well as completion of the Indian Basin and Illinois Camp sites,³² through which microwave transport from the Queen site links back to the core network, but both of which sites have yet to be constructed.³³ Beyond completion of Phase 2 work, the Queen, High Lonesome, and Twin Towers sites require completion of Phase 3 work, such as Enhanced 911 (“E911”) testing and verification, call through testing, Communications Assistance for Law Enforcement Act (“CALEA”) implementation, system optimization, and billing integration.

³¹ See Exhibit 1.

³² See Exhibit 1.

³³ The Indian Basin site requires cell site construction, but the Illinois Camp site requires tower construction and cell site construction.

Leaco is ready to begin cell site construction at six existing sites in the Waiver Tracts – Boaz, Dunlap, Lakewood, Indian Basin, White City, and WIPP³⁴ – however, these sites all require issuance of an NTP from American Tower. These sites also will require power connection and turn up, installation and turn up of transport back to the core network, and all Phase 3 work, as noted above.

Leaco will be ready to begin cell site construction at two of the sites in the Waiver Tracts – Hope and Hagerman Cutoff³⁵ – upon completion of construction of new towers at these sites. These sites will require issuance of an NTP from Tower Ventures, and Leaco expects to submit a request with all required supporting documentation for each site either concurrently with the completion of the tower construction or as soon as feasible thereafter.³⁶ These sites also will require power connection and turn up, installation and turn up of transport back to the core network, and all Phase 3 work, as noted above.

The Illinois Camp and Mile Marker 4 sites are farther behind.³⁷ Tower Ventures cannot begin tower construction until it has obtained BLM approval. Leaco expects to receive BLM approval as a tenant simultaneous with the BLM’s approval of the placement of these towers,³⁸ but Leaco also will need to enter into a lease with the BLM after approval has been granted. These sites will require issuance of an NTP from Tower Ventures, and Leaco expects to submit a request with required supporting documentation for each site either concurrently with the completion of the tower construction or as soon as feasible thereafter. These sites also will

³⁴ See Exhibit 1.

³⁵ See Exhibit 1.

³⁶ The construction of the Hagerman Cutoff tower remains subject to the issuance of a FONSI from the FCC.

³⁷ See Exhibit 1.

³⁸ See *infra*. n. 22.

require power connection and turn up, installation and turn up of transport back to the core network, and all Phase 3 work, as noted above.

The Olive site is proving to be a challenge.³⁹ In order to provide adequate coverage to the census tract, the site must be located in a remote area in which there are only a few large landholders. Leaco has been unable to enter into an agreement with any landowner in the area where it must have a tower and cell site.⁴⁰ Leaco, however, continues to seek suitable land and a lease. Leaco also is exploring other alternatives, including placement of a cell on wheels (“COW”) on land leased from an oil company. Once Leaco is able to obtain a lease to construct the Olive site, all tower and cell site construction must be completed, as well as the remainder of Phase 2 and Phase 3 work, as noted above.

Although substantial work remains to be completed, Leaco has made tremendous progress in the last 12 months, and fully anticipates that it will be able to complete the MFI projects in the Waiver Tracts with a six-month extension of time.

E. Leaco cannot commence and complete drive testing of the Waiver Tracts until it has substantially completed construction of the sites in all the Waiver Tracts.

Leaco can only conduct an accurate drive test for each Waiver Tract after construction is complete for all sites that are necessary to provide coverage within that tract. A site in one census tract may provide coverage that overlaps into adjacent census tracts, but it also may provide overlapping coverage with other sites within the same census tract. All sites are integral to the operation of the network and the provision of coverage sufficient to meet the Commission’s MFI requirements. Moreover, it would be inefficient to drive test a portion of a

³⁹ See Exhibit 1.

⁴⁰ Without RF coverage from the planned Olive site in this quadrant of Waiver Tract T35005001200, Leaco expects it will fall six percent short of the 75% coverage requirement.

partially completed census tract prior to the completion of other site constructions that impact the census tract coverage as this would require duplicative drive testing for overlap areas. Due to the parameters of the drive test data required by the FCC and the difficult terrain and poor road conditions in the applicable areas, the drive testing process is already *extremely burdensomely and expensive*. The testing would become even more so if drive testing could not be performed efficiently when all sites necessary for coverage in a Waiver Tract are completely constructed. Leaco is a small, rural telecommunications provider with limited resources, and it simply cannot afford to conduct multiple drive tests without suffering undue hardships. Therefore, Leaco anticipates that it must wait to commence drive testing until substantially all of the sites in the Waiver Tracts are constructed and operational.

III. Grant of the Requested Limited Waiver and Extension of Time Is Warranted and Would Serve the Public Interest.

There is good cause to grant the requested limited waiver and extension of the June 8, 2015, deadline for Leaco to complete construction and drive testing of its 3G network in the Waiver Tracts. Despite the delays that Leaco has encountered in constructing its 3G network in the Waiver Tracts, work on these MFI projects has been well underway since October 2012, and Leaco is pursuing an aggressive schedule to complete construction in the Waiver Tracts as quickly as possible. Leaco repeatedly has overcome obstacles and setbacks, and, with a small amount of additional time, will conquer the remaining obstacles in its path. Leaco expects to complete construction and drive testing for the Waiver Tracts by December 5, 2015, if not sooner. Grant of the requested waiver and extension will allow Leaco a reasonable amount of time to fully complete its MFI projects, which will serve the public interest.

A. Special Circumstances Warrant Deviation from the Commission’s Rules to Allow Leaco Additional Time to Complete Construction and Drive Testing for the Waiver Tracts.

Pursuant to Section 1.3 of its rules, the Commission may waive any provision of the rules for good cause or where, due to special circumstances, deviation from a rule would better serve the public interest and the Commission’s purposes than strict enforcement of the rule.⁴¹ The FCC also may take into account considerations of hardship, among other factors, when determining whether to grant a waiver.⁴² As explained above, the delays Leaco has encountered constitute special circumstances, largely outside of Leaco’s control. Whenever Leaco has experienced a delay or setback, Leaco has taken immediate action to attempt to address the situation. Although Leaco reasonably anticipated some delays in completing its MFI projects, and built some cushion into its deployment timeline, the combination of delays and setbacks explained above will prevent Leaco from being able to complete construction and testing by the aggressive two-year deadline prescribed in the Commission’s rules.

B. Good Cause Exists for Grant of the Requested Limited Waiver and Extension of Time.

The FCC’s objective in establishing MFI was to “expand current and next generation mobile services to areas without such services today.”⁴³ Consistent with the Commission’s MFI

⁴¹ See 47 C.F.R. § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972)).

⁴² *Wait Radio v. FCC*, 418 F.2d at 1159.

⁴³ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 at ¶ 359 (2011) (“*USF/ICC Transformation Order*”).

goals, Leaco has worked consistently and diligently and has devoted considerable resources and personnel to deploy a 3G network throughout the rural and unserved areas of southeastern New Mexico in the census tracts for which the FCC awarded Leaco MFI support. Despite the many delays and obstacles Leaco has faced, Leaco has gone above and beyond with its efforts, to the extent of taking business and financial risks, to complete the MFI projects in the Waiver Tracts as quickly as possible. As a result of Leaco's extraordinary efforts, Leaco expects to complete MFI construction and drive test reporting for all of the Waiver Tracts within just a few months of the June 8, 2015, deadline.

There is good cause to grant the requested waiver and extension of time, and the requested relief will serve the public interest by allowing Leaco to complete deployment of its 3G network for all tracts for which MFI support was awarded. Grant of the requested relief also will allow Leaco to remain financially capable of operating and managing this 3G network in the future. The deployment of Leaco's new 3G network will serve the public interest by making mobile voice and data services available to subscribers and roamers in these areas that are currently without access to 3G or better services. The public will not be harmed by a brief, six-month, extension of the construction deadline.

Approval of the requested waiver and extension also will serve the public interest, as there will be economic benefits associated with Leaco providing wireless coverage to the industries located in the Waiver Tracts, which include important oil and gas production and cattle and dairy industries. There are a large number of active oil and gas fields located in the Waiver Tracts. Leaco's new 3G network will support this vital petroleum exploration and extraction industry, thereby providing critical public safety and national security benefits. As

demonstrated, herein, there is good cause for the Commission to grant a limited waiver and extension of the two-year construction and reporting deadline for the Waiver Tracts.

C. Strict Compliance Is Contrary to the Public Interest and Would Cause Undue Hardship.

Strict enforcement of the requirements of Sections 54.1006(a) and (c) and a denial of Leaco's requested limited waiver and extension of time would not serve the public interest because absent the MFI support upon which Leaco relied in designing and constructing its 3G network, Leaco could not afford to complete construction, deployment, and maintenance of this network. By denying Leaco's waiver request, the Commission would be ensuring that the unserved rural areas in the Waiver Tracts in southeastern New Mexico would remain devoid of mobile wireless telephone and broadband services. This is not only contrary to the public interest, but contrary to the Commission's goals set forth in the *USF/ICC Transformation Order*.⁴⁴

As noted above, Leaco's MFI projects are a bargain for the Commission and the public. It would be contrary to the public interest for the Commission to terminate these projects when Leaco is diligently progressing to completion.

In addition, Leaco has expended considerable resources to plan, construct, and deploy its 3G network. If the FCC denies the requested limited waiver and extension and financially penalizes Leaco,⁴⁵ Leaco will face extreme financial harm and hardship. Denial of the requested waiver and extension would not only leave Leaco unable to operate and maintain the 3G network, but would have a devastating impact on the company's overall financial stability and future viability. Leaco expects that the losses associated with repayment of MFI funds already

⁴⁴ *See id.*

⁴⁵ *See* 47 C.F.R. § 54.1006(f) (requiring repayment of disbursed support and an additional performance default payment).

disbursed, the surrender of the ten percent penalty amount for failure to complete the projects, and the inability to recoup expenses already incurred in constructing the network will cause the company to suffer financial distress that will put its very existence in jeopardy, and thereby its provision of Internet and telecommunications services to consumers and businesses in rural areas of New Mexico, including those areas where Leaco already offers services. Such a result would be contrary to the public interest, and contrary to Congressional and Commission universal service and broadband deployment policies and goals.

IV. Conclusion

Leaco is serving the public interest and the Commission's goals by deploying mobile voice and broadband services to previously unserved areas in rural, southeastern New Mexico. Leaco, however, has encountered a series of delays beyond its control that prevent Leaco from being able to complete construction and drive testing within the Commission's aggressive two-year performance timeframe. Leaco has worked diligently to overcome hurdles to deployment and expects to be able to complete the MFI projects in the Waiver Tracts with a brief extension of time. For the reasons set forth above, Leaco respectfully requests a limited waiver and 180-day extension of the deadline for completing construction and submitting drive test data for Waiver Tracts T35005001102, T35005001200, T35005001400, T35015000700, T35015000800,

and T35015000900 until December 5, 2015. Leaco requests expeditious Commission action on this request so that Leaco can plan and act accordingly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Whiteaker', with a long horizontal flourish extending to the right.

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