

**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.”<sup>1</sup> In response, Lennon submitted reviewed financial statements consistent with FCC Form 481,<sup>2</sup> yet the Wireline Competition Bureau “removed Lennon from further consideration for failing to file the required financial information and not submitting a waiver request.”<sup>3</sup>

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,”<sup>4</sup> 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.

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> See *Order* at para. 2.

<sup>4</sup> 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.