

LAW OFFICES
BLOOSTON, MORDKOFKY, DICKENS, DUFFY & PRENDERGAST, LLP

2120 L STREET, NW
WASHINGTON, DC 20037

(202) 659-0830
FACSIMILE: (202) 828-5568

BENJAMIN H. DICKENS, JR.
JOHN A. PRENDERGAST
GERARD J. DUFFY
RICHARD D. RUBINO
MARY J. SISAK
D. CARY MITCHELL
SALVATORE TAILLEFER, JR.

ARTHUR BLOOSTON
1914 – 1999

AFFILIATED SOUTH AMERICAN OFFICES

ESTUDIO JAUREGUI & ASSOCIATES
BUENOS AIRES, ARGENTINA

HAROLD MORDKOFKY
OF COUNSEL

EUGENE MALISZEWSKYJ
ENGINEERING CONSULTANT

June 20, 2019

WRITER'S CONTACT INFORMATION
(202) 828-5528

Filed Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: *Connect America Fund*, WC Docket No. 10-90

Dear Ms. Dortch:

On Tuesday, June 18, 2019, Jeff Smith of GVNW Consulting, Inc. and undersigned counsel met on behalf of Copper Valley Telephone Cooperative, Inc. ("CVTC") with Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety, to Commissioner Jessica Rosenworcel, to discuss CVTC's pending May 24, 2019 appeal of a Universal Service Administrative Company ("USAC") audit decision.

The CVTC appeal presents the following two legal questions: (1) whether a rural local exchange carrier can lawfully and equitably be penalized by a loss of substantial high-cost support due an arrangement it entered in order to comply with Alaska state law; and (2) whether the restrictions against sale and lease-back transactions set forth in Section 36.2(c)(2) of the Commission's Rules and interpreted in the Commission's 2001 *Moultrie Independent Telephone Company* order (16 FCC Rcd 18,242) can be stretched and twisted to encompass a lease of dark fiber and purchase of tariffed services that is wholly different in form, intent and operation..

CVTC has asserted throughout the audit, a USAC appeal and the pending Commission appeal that the arrangement whereby it leased four (4) non-operational dark fibers along each of three separate interexchange routes to its interexchange subsidiary and then purchased some of the tariffed interexchange services that the subsidiary offered to the public over those fibers after it had lit and upgraded them, was not the type of manipulative and self-serving "sale and lease-back" arrangement that Section 36.2(c)(2) was intended to prevent. The subject interexchange dark fibers were never a part of CVTC's operational assets (much less, a substantial part) because CVTC was prohibited by Alaska law from providing interexchange services. CVTC did not lease the dark fibers back from its subsidiary or otherwise use them in its own operations; rather, the subsidiary improved the fibers and used them to provide a variety of tariffed services to a number of unrelated carrier and business customers in addition to CVTC. CVTC neither

Marlene H. Dortch, Secretary
June 20, 2019
Page 2 of 2

made nor negotiated any “sweetheart” rental payments to its subsidiary; rather, it paid the tariffed prices at which subsidiary offered the same services to the public in general. Finally, CVTC did not “voluntarily” make the lease arrangement with its subsidiary, but rather had no choice due to the Alaska restrictions but to sell or lease the interexchange dark fibers to an entity authorized to provide interexchange services unless it wanted to let them remain unused.

If USAC’s decision is upheld, it would effectively put the Commission in the position of preempting Alaska’s regulation of the intrastate services of Alaskan local exchange carriers and interexchange carriers. CVTC is aware of no past instance where a carrier has been penalized by the Commission for complying with governing state law. Rather, the long-established Commission policy of cooperation between the interstate and intrastate jurisdictions has never, to CVTC’s knowledge, put regulated entities in the position of choosing between retaining their high cost support or complying with applicable state law.

Pursuant to Section 1.1206(b) of the Commission's Rules, this submission is being filed for inclusion in the public record of the referenced proceedings.

Respectfully submitted,

/s/ Gerard J. Duffy

Gerard J. Duffy
Blooston, Mordkofsky, Dickens, Duffy &
Prendergast, LLP
2120 L Street NW (Suite 300)
Washington, DC 20037
Telephone: (202) 659-0830
Email: gjd@bloostonlaw.com

cc: Travis Litman