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June 29, 2016

Via ECFS

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

Re: WC Docket No. 10-90 *et al.*
Smart City Telecommunications LLC d/b/a Smart City Telecom
Petition for Limited Waiver of Section 51.917(b)(7)(ii), 2011 Rate-of-Return Carrier Base Period Revenue
Notice of *Ex Parte*

Dear Ms. Dortch:

On June 27, 2016, Jim Schumacher and Debbie Huttenhower of Smart City Telecommunications LLC dba Smart City Telecom ("Smart City" or the "Company") with Steve Meltzer, John Kuykendall, and Cassandra Heyne of JSI (collectively, "Smart City Representatives" or "Representatives") met via conference call with Deena Shetler, Pamela Arluk and Victoria Goldberg of the Wireline Competition Bureau ("Bureau") of the Federal Communications Commission ("FCC"). The purpose of these calls was to discuss Smart City's pending petition for limited waiver of Section 51.917(b)(7)(ii).[1]

In the meeting, the participants discussed the Bureau's concerns that the Petition did not fall squarely within the bounds of footnote 1745 in the *Transformation Order*.[2] Specifically, the Bureau raised concerns that the revenues that Smart City seeks to add to its Baseline Period Revenue ("BPR") calculations were the result of a "dispute" which was "settled" and did not involve a court or regulatory agency of competent jurisdiction.

The Smart City Representatives then demonstrated that the Petition satisfies the "good cause" standard for granting waivers. The Representatives cited decisions in which the Commission acted favorably upon petitions that deviated from the parameters of that

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[1] *See* Petition of Smart City Telecommunications LLC d/b/a Smart City Telecom for Limited Waiver of 47 C.F.R. § 51.917(b), WC Docket No. 10-90 *et al.*, filed March 27, 2013 ("Petition").
[2] *See Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*Transformation Order*") at n.1745, *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

footnote[3] and demonstrated that it was not necessary for the facts to fall within the four corners of the footnote 1745 for the Petition to be granted. The Representatives also emphasized that the circumstances in the Petition are even more favorable to grant than the FCC envisioned in the footnote in that under these circumstances, Smart City successfully negotiated carrier payments and no court or regulatory agency had to be involved. The Representatives explained that after reaching a settlement to pay part of the total outstanding amount – all of which were billed as switched access during FY 2011, Verizon paid the majority of the amount that it had originally withheld from payment and did so with no indication or explanation as to what portion it had previously disputed.

The Representatives also observed that if a settlement for the disputed amounts had been reached and payment made prior to March 31, 2012, the revenues pertaining to intrastate terminating switched access associated with FY2011 would have been included in Smart City's BPR amounts. Accordingly, the Petition is merely seeking an extension of the March 31, 2012 deadline until December 25, 2012 so that it can include in its BPR amount the intrastate terminating switched access revenues associated with FY 2011 that were billed to Verizon Business but collected after March 31, 2012.

In conclusion, the Representatives argued that the Petition should not be denied based on the fact that the revenues were, at one time, the subject of a "dispute" and were collected as a result of a "settlement" - and not as a result of the decision of a court or regulatory agency of competent jurisdiction. To do so would arbitrarily deny the inclusion of revenues in the BPR amounts because the revenues were the subject of a dispute and were collected as a result of a settlement when revenues under similar situations were allowed to be included in BPR amounts so long as they were collected prior to the March 31, 2012 deadline.

Please direct any questions regarding the filing to the undersigned.

Sincerely,

John Kuykendall
JSI Vice President
301-459-7590
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cc: Deena Shetler
Pamela Arluk
Victoria Goldberg

[3] *See Connect America Fund et al.*, WC Docket No. 10-90 *et al*., Order, FCC 14-121 (rel. Aug. 7, 2014) and *Connect America Fund et al.*, WC Docket No. 10-90 *et al*., Order, DA 15-739 (rel. June 24, 2015) (FCC acting favorably upon petitions which sought to include revenues that were billed but not collected due to an access avoidance scheme and subsequent bankruptcy by Halo Wireless, Inc.).