

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**EAST KENTUCKY NETWORK, LLC d/b/a APPALACHIAN WIRELESS
PETITION FOR LIMITED WAIVER AND REQUEST
FOR EXTENSION OF COMPLIANCE DEADLINES FOR
MOBILITY FUND PHASE I PUBLIC INTEREST OBLIGATIONS**

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July 19, 2016

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SUMMARY

East Kentucky Network, LLC d/b/a Appalachian Wireless, using Mobility Fund Phase I support combined with its own capital investments, has made steady progress in deploying 4G broadband networks to serve customers in many small communities in the rural Appalachian Mountains areas of eastern Kentucky.

In certain cases, however, this progress has been hampered by a variety of delays and encumbrances that Appalachian Wireless could not have reasonably anticipated, and that it has worked diligently to overcome. Nonetheless, these delays and impediments have forced the need for Appalachian to submit this Petition requesting limited waivers of the July 19, 2016, deadline for its compliance with Phase I network coverage requirements and other public interest obligations. The Petition demonstrates that there is good cause to grant the requested waivers, and that a grant of the Petition will serve the public interest.

Floyd County and Harlan County Census Tracts

Appalachian Wireless requests a nine-month extension of the July 19, 2016, deadline for Census Tract T21071920900 in Floyd County and Census Tract T21095970100 in Harlan County, as a result of several unexpected delays that have prevented Appalachian from maintaining its schedule for the construction, network integration, and testing of certain cellular tower sites in each of the Census Tracts.

These delays—none of which could reasonably have been anticipated or prevented by Appalachian Wireless—have involved state agency reviews that were unexpectedly extended by requests for further environmental impact analyses; the need to develop and submit a mitigation plan (a process that took 16 months to complete) to address state agency concerns relating to impacts

on historic properties; a requirement that Appalachian enter into a memorandum of agreement (including an environmental assessment) with the Commission to resolve issues relating to these impacts on historic properties; and the discovery (based on continuing engineering surveys and analyses conducted by Appalachian) that an additional site was required in the Floyd County Census Tract, and that the planned cellular tower height at this additional site should be increased in order to ensure compliance with Phase I network coverage and broadband latency requirements.

Additional Census Tracts

Appalachian Wireless also requests a brief 90-day extension of the July 19, 2016, deadline for five additional Census Tracts. Appalachian has been successful in completing cellular tower construction and tower stacking at all 18 tower sites in these Census Tracts. A brief extension is necessary, however, to enable Appalachian to complete drive testing, and to prepare and submit drive test reports to the Commission, for each of the Tracts.

The factors contributing to unexpected delays affecting these Census Tracts include exceptionally high levels of snowfall and rainfall in the eastern Kentucky region during 2016, the lack of contractors with the capability of using specialized construction techniques at sites with complex terrain issues, unanticipated Commission rule changes that led to delays in the submission of FCC Form 854 applications for the registration of Appalachian Wireless's proposed cellular towers, and exceptionally long review times for the issuance of the Federal Aviation Administration's "no hazard" determinations in the case of some proposed towers.

Good Cause To Grant the Requests for Waivers

Appalachian Wireless demonstrates good cause for granting the Petition, showing that it has faced encumbrances beyond its control and has diligently worked to overcome these delays and complete construction in a timely fashion.

Granting the Petition will serve the public interest by helping to ensure the availability of robust, affordable voice and broadband services to consumers in rural areas in eastern Kentucky. Moreover, in light of Appalachian Wireless's efforts to overcome delays and its success in completing tower construction at all sites in the Census Tracts for which a 90-day extension is sought, equity and the effective implementation of the Commission's Mobility Fund and other universal service policies both will be served by the waiver of penalties otherwise mandated by the Commission's rules.

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East Kentucky Network, LLC d/b/a Appalachian Wireless (“Appalachian Wireless” or “Appalachian”), by counsel and pursuant to Section 1.3 of the Commission’s Rules,¹ hereby submits this petition (hereinafter, the “Petition”) to seek a limited waiver of Mobility Fund Phase I (“Phase I”) public interest obligations, and to request an extension of the three-year deadline established in the Commission’s rules for construction of a network providing fourth generation LTE (“4G”) service,² and for the submission of drive test data,³ with respect to certain specified Census

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. § 54.1006(b). As discussed below, Appalachian Wireless originally planned to deploy 3G service in the Census Tracts that are the subject of the Petition, but received approval from the Commission in 2015 to deploy 4G service in those Census Tracts pursuant to extended construction deadlines.

³ 47 C.F.R. § 54.1006(c).

Tracts for which Appalachian Wireless was a winning bidder in Auction No. 901 for Phase I support.⁴

I. INTRODUCTION.

Appalachian Wireless is headquartered in Ivel, Kentucky, and is owned directly by, or by affiliates of, five rural telephone companies that have provided telephone service in rural eastern Kentucky communities for decades, having entered the wireless communications business in 1991. Appalachian has deployed cellular tower sites in 29 counties to serve many small communities and connecting roads in the rural Appalachian Mountains.

Through the years Appalachian has supplemented its cellular spectrum holdings with broadband PCS spectrum and 700 MHz spectrum in order to meet increasing demand for wireless voice and broadband data services in the communities it serves. It is the only locally-owned and operated wireless carrier deploying 4G broadband service in these communities.

For the reasons explained in detail in the Petition, Appalachian Wireless requests the Commission to waive the requirements of Section 54.1006(b) of its rules, and to extend the construction and applicable drive test data reporting deadline (1) for Census Tracts T21071920900 and T21095970100, to April 19, 2017, nine months from the current July 19, 2016, construction and reporting deadline; and (2) for Census Tracts T21025920600, T21095971300, T21153970300, T21153970400, and T21175950100, to October 17, 2016, 90 days from the current July 19, 2016, construction and reporting deadline.

⁴ *Mobility Fund Phase I Support Authorized for 54 Winning Bids, Default on One Auction 901 Winning Bid Determined*, Public Notice, 28 FCC Rcd 10310 (WTB, WCB 2013) (“*Authorization Public Notice*”) (authorizing support for Appalachian Wireless in 19 Census Tracts); see *Mobility Fund Phase I Auction Closes, Winning Bidders Announced for Auction 901*, FCC Public Notice, 27 FCC Rcd 12031, 12045-46 (Attach. A) (2012).

Appalachian Wireless’s request for an extension of the construction and reporting deadline relates in part to the Hippo Site in Census Tract T21071920900, and to the Lynch Site and the Benham Site in Census Tract T21095970100 (collectively referred to as the “Waiver Sites”). Census Tract T21071920900, located in Floyd County, Kentucky (Study Area Code 268005) (“Floyd County Census Tract” or “Floyd County”), contains 8.28 eligible road miles. Census Tract T21095970100, located in Harlan County, Kentucky (Study Area Code 268006)⁵ (“Harlan County Census Tract” or “Harlan County”), contains 41.98 eligible road miles.

In addition, Appalachian Wireless’s request for a 90-day extension of the construction and reporting deadline applies to the following Census Tracts (collectively referred to as the “Additional Census Tracts”):

CENSUS TRACT	COUNTY	SAC	ELIGIBLE ROAD MILES
T21025920600	Breathitt	268001	50.10
T21095971300	Harlan	268008	188.10
T21153970300	Magoffin	268012	63.58
T21153970400	Magoffin	268013	46.00
T21175950100	Morgan	268014	143.13

Appalachian Wireless also requests a waiver of Section 54.1006(f) of the Commission’s Rules⁶ pursuant to which Appalachian (1) will not be obligated to (a) repay to the Commission any Phase I support that the Commission has already disbursed to Appalachian in connection with the Census Tracts for which waiver is sought in the Petition; or (b) make any performance default payments prior to the extended deadlines requested in the Petition; and (2) will not be disqualified from receiving Mobility Fund Phase I support or other Universal Service Fund support.

⁵ As discussed below, an additional Census Tract located in Harlan County (T21095971300, SAC 268008) is also the subject of a request in the Petition for a waiver of the July 19, 2016, construction and reporting deadline.

⁶ 47 C.F.R. § 54.1006(f).

Appalachian Wireless was initially authorized to receive Phase I support for the deployment of 3G service within two years for 1,306.86 eligible road miles in 19 Census Tracts.⁷ Subsequently, Appalachian requested that the Commission revise the construction deadline for 12 of these Census Tracts, covering 832.14 eligible road miles, “to reflect the company’s decision to deploy a 4G network” covering those Census Tracts.⁸ The Commission granted this request, establishing July 19, 2016, as the revised construction deadline for the 12 Census Tracts.⁹

The 12 Census Tracts cover “extremely rural” areas in Kentucky.¹⁰ Appalachian Wireless is required to deploy networks in these Census Tracts that deliver 4G LTE service not later than July 19, 2016 (three years after the authorization of Phase I support for Appalachian).¹¹ Before the July 19 deadline, Appalachian is required to submit drive test data showing mobile transmissions (supporting both voice and data) covering at least 75 percent of previously unserved areas.¹²

Appalachian Wireless has worked diligently and efficiently to make steady progress in utilizing its Phase I support and in deploying 4G LTE service that will meet the Section 54.1006

⁷ See *Authorization Public Notice*, at Attach. A.

⁸ Letter from Todd Slamowitz & Marc A. Paul, Attorneys for Appalachian Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 (July 16, 2015) (“Appalachian July 2015 Letter”), at 2.

⁹ *Revised Construction Deadline Approved for Recipient of Mobility Fund Phase I Support*, Public Notice, 30 FCC Rcd 13421 (2015) (“*Revised Deadline Public Notice*”).

¹⁰ Appalachian July 2015 Letter at 1.

¹¹ See *Revised Deadline Public Notice*, at Attach. A.

¹² 47 C.F.R. § 54.1006(b). The mobile transmissions must meet or exceed outdoor minimum data transmission rates of 50 kbps uplink and 200 kbps downlink at vehicle speeds appropriate for the roads covered, and must have a “[t]ransmission latency low enough to enable the use of real time applications, such as VoIP [voice-over-Internet protocol].” *Id.* The construction deadline for the seven Census Tracts for which Appalachian Wireless continued to be obligated to deploy 3G networks was July 19, 2015. Appalachian has satisfied the 75 percent coverage requirement for each of these Census Blocks (T21071920700, T21095971000, T21109960300, T21133950100, T21133950200, T21195930200, and T1195930600).

network coverage requirements by the July 19, 2016, deadline. Overall, Appalachian has completed the construction of 34 cellular tower sites in the Census Tracts for which it is receiving Phase I support, it has upgraded 43 additional sites in these Census Tracts to cover eligible road miles, and it has supplemented its Phase I support with significant investment of its own capital resources in order to move forward with its 4G network deployment in the Census Tracts covered by the *Revised Deadline Public Notice*.

Unfortunately, as discussed in Section II, below, Appalachian Wireless has encountered unexpected delays affecting deployment in the three Waiver Sites, for reasons beyond its control, and these delays have necessitated the request in the Petition for an extension of the revised construction deadlines applicable to the Floyd County and Harlan County Census Tracts. Moreover, unexpected delays beyond Appalachian's control have made it necessary for Appalachian to request an extension of 90 days beyond the July 19, 2016, deadline, for each of the Additional Census Tracts, to complete the required drive tests and submit the drive test data to the Commission to certify completion of construction and satisfaction of the network coverage requirement in those Census Tracts.

II. CIRCUMSTANCES BEYOND APPALACHIAN WIRELESS'S CONTROL HAVE CAUSED UNEXPECTED DELAYS IN CONSTRUCTION THAT JUSTIFY A WAIVER OF THE CONSTRUCTION AND REPORTING DEADLINE.

In order to make a successful showing in support of its request for a waiver and an extension of the Section 54.1006(b) revised construction deadline, Appalachian Wireless must clear the hurdle of "plead[ing] with particularity the facts and circumstances" that warrant a grant of the requested waiver and extension of the construction deadline.¹³ These required showings for each

¹³ *Rio Grande Radio Family Fellowship, Inc. v. FCC*, 406 F.2d 664, 666 (D.C. Cir. 1968). See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, n.9 (D.C. Cir. 1969) ("*WAIT Radio*"), *cert. denied*, 409 U.S. 1027 (1972).

of the three Waiver Sites and for the Additional Census Tracts are presented in the following sections. In addition, attached as Exhibit A, Appalachian provides a Declaration Under Penalty of Perjury of Lynn Haney, Appalachian's Regulatory Compliance Director, attesting to the facts stated in the Petition.

Appalachian Wireless notes that, as a general matter, the construction of additional cellular tower sites located in the Floyd County and Harlan County Census Tracts, and in the Additional Census Tracts and other Census Tracts that are subject to the revised construction deadline for 4G deployment, has proceeded on a phased basis, such that cellular sites in which building commenced earlier in the construction schedule have been completed earlier than cellular sites in which building commenced later in the schedule.

Nonetheless, work on cellular tower sites in the Floyd County and Harlan County Census Tracts, and in the Additional Census Tracts, was commenced by Appalachian Wireless in sufficient time for on-time completion, allowing for reasonable margins for unexpected delays.

A. Unexpected Delays Have Impaired Appalachian Wireless's Efforts To Meet the July 19, 2016, Deadline at Three Sites in the Floyd County and Harlan County Census Tracts.

Notwithstanding Appalachian Wireless's diligent efforts, and for the reasons discussed in the following sections, three sites will not be completed by the July 19, 2016, construction deadline, and require a nine-month extension, due to significant and unforeseen encumbrances.

1. The Lynch Site (Harlan County).

Appalachian Wireless, in connection with satisfying the network coverage requirements for Phase I, will construct a 190-foot above-ground self-supporting lattice cellular tower within the boundaries of Lynch, a community with a population of 747, located in southeastern Kentucky. Alternative sites for the undertaking were determined not to exist without requiring construction of

multiple towers to achieve coverage.

The regulatory review processes—at the local, state, and federal levels—for Appalachian Wireless’s proposed cellular tower construction have spanned nearly three years and are still not complete. In 2013, as Appalachian made arrangements for a property lease,¹⁴ and as engineering and other work proceeded in connection with the planned construction of a cellular tower located in the Historic District of Lynch, Appalachian began its involvement in state and local review processes regarding the tower construction proposal. Appalachian’s proposal for the tower construction was approved by the Lynch City Council on September 10, 2013; the mayor of Lynch subsequently indicated, in expressing support for the tower construction, that the city has “absolutely zero wireless service, and the strain that brings to our small Police force is immense.”¹⁵

Approval of Appalachian Wireless’s proposed tower construction by the Lynch City Council nearly three years ago was “the end of the beginning” of Appalachian’s efforts to obtain regulatory review and approval of the planned construction. This regulatory review process has produced unexpected delays, and still has not reached its conclusion.

On February 28, 2014, Dynamic Environmental Associates (“DEA”), acting on behalf of Appalachian, requested a review by the Kentucky State Historic Preservation Office (“Kentucky SHPO” or “SHPO”), pursuant to Section 106 of the National Historic Preservation Act (“NHPA”), of potential impacts to historic properties that could result from construction of the Lynch cellular tower site. DEA noted its own conclusion that “there will be an adverse effect on historic or cultural resources as a result of this project,” and requested an opportunity to discuss mitigation or avoidance

¹⁴ A property lease agreement between Appalachian Wireless and the City of Lynch, for the cellular tower site, took effect on September 13, 2013.

¹⁵ Letter from John S. Adams, Mayor, City of Lynch, Ky., to Appalachian Wireless (June 3, 2014).

of any adverse effects of the project.¹⁶

This DEA request launched an extended review, which included consideration of comments and concerns regarding the proposed tower construction that had been raised initially on November 22, 2013, by Mr. Stanley Sturgill, a citizen of Lynch.¹⁷ Ultimately, the Kentucky SHPO determined, on March 25, 2014, that the proposed tower construction would have an adverse effect on historic properties in Lynch. The findings made by DEA and the Kentucky SHPO, and the delays in Appalachian Wireless's construction plans that they introduced, could not have been reasonably anticipated by Appalachian.

Appalachian Wireless has been successful in addressing the concerns raised by the Kentucky SHPO. Appalachian entered into a Memorandum of Agreement ("MOA") with SHPO and the Commission, on May 9, 2016, to resolve the findings made by SHPO.

Meanwhile, on January 14, 2016, Appalachian Wireless submitted a request to the Federal Aviation Administration ("FAA") for a determination that the proposed tower would not pose any threat to air navigation. The FAA issued the requested determination on April 28, 2016. Shortly thereafter, on May 2, 2016, Appalachian submitted an application with the Commission to register the tower,¹⁸ and, on May 16, 2016, Appalachian amended the application to include an Environmental Assessment ("EA").

This final stage of the regulatory review process, which Appalachian Wireless was able to

¹⁶ Letter from Virginia M. Janssen, Principal Archeologist, DEA, to Craig Potts, Executive Director & SHPO, Kentucky Heritage Council (Feb. 28, 2014), at 1.

¹⁷ See Letter from Virginia M. Janssen, Principal Archeologist, DEA, to Stanley Sturgill (Feb. 27, 2014).

¹⁸ Appalachian Wireless, Application for Antenna Structure Registration (FCC Form 854), ASR App. No. A1005338 (filed May 2, 2016).

initiate in a timely manner that would ensure compliance with the July 19, 2016, construction deadline, has also been slowed by an unforeseen development that was beyond Appalachian's control and that necessitates this request for an extension of the deadline.

Specifically, consideration of Appalachian Wireless's Antenna Structure Registration ("ASR") application for construction of the cellular tower in Lynch has been delayed as a result of a filing made with the Commission on May 30, 2016, by Mr. Sturgill, objecting on several grounds to the proposal to locate the cellular tower in the Historic District of Lynch. Mr. Sturgill requested further environmental processing of the ASR application, based upon aesthetic concerns and claims relating to ground-level radio frequency ("RF") power densities, and advocated for the further consideration of alternative sites. Appalachian, in asking the Commission to dismiss Mr. Sturgill's request, demonstrated that the benefit of having reliable wireless service in Lynch outweighs concerns for aesthetics, alternative sites, and RF exposure.¹⁹

On July 6, 2016, the Competition and Infrastructure Policy Division ("Division") of the Commission's Wireless Telecommunications Bureau denied Mr. Sturgill's request for further environmental processing in connection with Appalachian Wireless's pending ASR application, which must be approved by the Commission as a prerequisite for construction of the cellular tower in Lynch. Notwithstanding this denial, consideration of Appalachian's application remains subject to further delays, for two reasons: (1) Mr. Sturgill has an opportunity to seek reconsideration of the Division's decision; and (2) the MOA must be re-executed to add Mr. Sturgill as a consulting party, after which the EA must be amended so that the Commission may grant the ASR for the Lynch tower.

¹⁹ Appalachian Wireless, Opposition to Request for Further Environmental Processing, ASR App. No. A1005338 (filed June 15, 2016).

Moreover, even though Mr. Sturgill's request has been denied, its pendency since May 30, 2016, has delayed Appalachian's efforts to construct a cellular tower at the Lynch site, now making it impossible for construction and testing to be completed by the July 19 deadline. Given the delays in construction at the site, and the construction work, network integration, and drive tests that must be completed, Appalachian is seeking a nine-month extension of the July 19 deadline for the Harlan County Census Tract. This extension will also apply to the Benham site (discussed in the following section), which is located in the same Census Tract (T21095970100) as the Lynch site. Appalachian anticipates that all construction work on the Lynch tower, as well as network integration, drive testing, and the preparation and submission of drive test reports to the Commission, will be completed by the end of this requested extension period.

2. The Benham Site (Harlan County).

Part of the efforts undertaken by Appalachian Wireless to comply with the Phase I network coverage requirements involves the construction of a 190-foot above-ground monopole cellular tower in the Historic District of Benham, a town with 500 residents located in southeastern Kentucky. Alternative sites for the undertaking were determined not to exist without requiring construction of multiple towers to achieve the required coverage. The cellular tower will be located on property made available to Appalachian through a lease agreement it signed with the United Methodist Church on November 1, 2013. After obtaining the lease agreement, Appalachian initiated multi-year state and local review processes regarding its tower construction proposal.

These regulatory review processes have produced unexpected delays that have prompted this request for an extension of the July 19, 2016, construction deadline. The principal source of delay has involved concerns indicated by the Kentucky SHPO that construction of the cellular tower would have adverse effects on historic properties in surrounding residential areas in Benham.

SHPO initially stated these concerns in May 2014 in response to a submission made in April 2014 by DEA on behalf of Appalachian Wireless,²⁰ indicating that it disagreed with DEA's argument that painting the proposed tower would reduce impacts so that there would be no adverse effects.²¹ Appalachian could not have reasonably anticipated, at the time it selected the site for construction of the cellular tower in Benham, that historic properties in the vicinity could be adversely affected, or that initial proposed steps to mitigate any such adverse impacts would be deemed insufficient by state regulatory authorities. Moreover, Appalachian could not have reasonably anticipated the length of time that would be required to resolve the concerns raised by SHPO.

In order to address the concerns stated by the Kentucky SHPO in its May 2014 letter, it was necessary for Appalachian Wireless to develop and submit a Cultural Resources Mitigation Plan ("Mitigation Plan" or "Plan") for the Benham site. Appalachian contracted with DEA to develop the Plan, and DEA completed this task on September 25, 2015, 16 months after issuance of the SHPO letter.

²⁰ Letter from Virginia M. Janssen, Principal Archeologist, DEA, to Craig Potts, Executive Director & SHPO, Kentucky Heritage Council (Apr. 23, 2014) (enclosing FCC Form 620, completed by DEA in compliance with the requirements of Section 106 of NHPA). DEA had initiated the Section 106 review in November 2013, at which time it contacted City of Benham and Harlan County government officials, seeking comment on the proposed cellular tower construction project. *E.g.*, Letter from Virginia M. Janssen, Principal Archeologist, DEA, to Hon. Judge Joseph A. Grieshop, Harlan County (Nov. 25, 2013). A study prepared by CDM Smith and commissioned by DEA, which was completed in January 2014, had determined that the proposed cellular tower presented an adverse effect to the Benham National Register Historic District, and recommended consultation with the Kentucky SHPO to determine ways to avoid or mitigate the adverse effect. CDM Smith, "Cultural Historic Survey for the Proposed Benham Communications Tower Location, Harlan County, Kentucky" (Jan. 2014), at 3-62.

²¹ Letter from Craig A. Potts, Executive Director & SHPO, Kentucky Heritage Council (May 20, 2014), at 1.

Since no construction of the Benham tower could proceed during the pendency of DEA's efforts to develop and complete the Mitigation Plan, Appalachian Wireless's schedule for completing the tower, and the related testing, network integration, and preparation of reports, by the July 19, 2016, construction deadline, has been significantly impaired, and has resulted in the need for an extension of the deadline. Further, as noted above, Appalachian, in developing its timetable for construction, could not reasonably have anticipated the delays that have occurred as a result of the Kentucky SHPO's concerns regarding adverse effects that construction of the tower could have on historic properties.

Noting that Appalachian Wireless "prefers that the mitigation project have a direct and positive impact on ... the City of Benham[,]” the Mitigation Plan explains that Appalachian intends “to contribute to the preservation of the Benham Historic District by specifically participating in the preservation and continued utilization of The Benham Hospital, a contributing resource of the historic district.”²²

Appalachian Wireless's discussions with City of Benham officials regarding arrangements for the contribution to the hospital caused further delays, but, on May 16, 2016, an application to register the Benham tower with the Commission was amended with an EA, which included an MOA wherein Appalachian agreed to donate to the City of Benham \$10,000 to purchase and install finished flooring for the Benham Hospital building. The Commission issued a Finding of No Significant Impact on June 29, 2016, and granted ASR 1299688 for the Benham tower on July 1, 2016. Meanwhile, the FAA study process commenced on January 14, 2016, resulting in issuance of a Determination of No Hazard on April 28, 2016.

²² DEA, “Cultural Resources Mitigation Plan, Benham Site, Harlan County, Kentucky,” KHS Project No. FY14-1660 (Sept. 25, 2015), at 5.

The July 1, 2016, Commission ASR approval has virtually cleared the way for construction of the cellular tower at the Benham site,²³ but, given the amount of work that now must be carried out, Appalachian Wireless is seeking a nine-month extension of the July 19 deadline for the Harlan County Census Tract. Appalachian has concluded that all construction work on the tower, and associated work relating to network integration, drive testing, and drive test reporting, will be completed by the end of this requested extension period.

3. The Hippo Site (Floyd County).

As part of its efforts to meet the Phase I network coverage requirements, Appalachian Wireless will construct a 360-foot above ground level self-supporting lattice cellular tower approximately one mile north of Hippo, a small community in eastern Kentucky.

Two developments causing unexpected construction delays have necessitated Appalachian Wireless's request for an extension of the July 19, 2016, construction deadline for Census Tract T21071920900. *First*, Appalachian's initial plans for meeting the Commission's 75 percent network coverage requirement for Census Tract T21071920900 did not include any construction at the Hippo site. Propagation studies carried out by Appalachian, consistent with industry practices and standards, showed that the originally planned site construction in the Census Tract would be sufficient. Nonetheless, as construction work proceeded in the Census Tract, further engineering analysis resulted in Appalachian Wireless's subsequent determination that an additional cellular tower, at the Hippo site, would be needed to meet the Phase I coverage requirement.

²³ Construction cannot begin, however, until Benham Hospital officials make purchasing decisions and final arrangements are made between the City of Benham and Appalachian Wireless concerning its donation for the purchase and installation of flooring at the Benham Hospital building. The completion of these arrangements is expected to occur in the near future.

Once this determination was made, Appalachian Wireless has acted expeditiously in making arrangements for construction at the Hippo site, but the late addition of the Hippo site to Appalachian's construction plans presented difficulties in meeting the July 19, 2016, construction deadline. In addition, Appalachian encountered unexpected delays in its efforts to negotiate a lease with the owner of property at the Hippo site, and was not able to obtain a lease agreement until October 30, 2015.

And, second, the Hippo tower was originally approved by the FAA as a 310-foot structure on January 4, 2016. However, further engineering studies conducted by Appalachian Wireless led to its determination that it could satisfy the 75 percent coverage requirement for Census Tract T21071920900, without the need for any additional towers, if the height for the Hippo tower was increased by 50 feet. Appalachian also concluded that the increased tower height would improve latency performance for broadband services provided to Appalachian's customers, consistent with clarifications issued by the Universal Service Administrative Company concerning the Phase I latency requirements.

The height increase for the Hippo tower caused delays in construction because it required further FAA study. On June 24, 2016, the FAA issued a Determination of No Hazard in Study No. 2016-ASO-7887-OE. An application to register the 360-foot Hippo structure is now pending before the Commission in File No. A1040766. The ASR application is on FCC national public notice, with comments from interested parties due by July 29, 2016.

Given the fact that Appalachian Wireless's ASR application has not yet been approved by the Commission, Appalachian is seeking a nine-month extension of the July 19 deadline for the Floyd County Census Tract. Appalachian believes that all construction work on the tower, as well as work relating to network integration, drive testing, and the reporting of drive test results, will be

completed by the end of this requested extension period.

B. Construction Is Complete at All Sites in Five Census Tracts, But a Short Extension of the Phase I Deadline Is Necessary To Enable the Collection and Submission of Drive Test Data.

Although encountering some unexpected delays, which Appalachian Wireless could not have foreseen and which hindered efforts to meet construction schedules, Appalachian has worked through these delays and completed all planned cellular tower site construction in each of the Additional Census Tracts. A 90-day extension of the construction deadline is necessary, however, to enable Appalachian to collect and report drive test data to the Commission, as required by Section 54.1006(b) of the Commission's rules. The following sections present an overview of the status of construction at each site in the Additional Census Tracts, and then discuss factors that have contributed to the need for Appalachian to request the 90-day extension.

1. Appalachian Wireless Has Worked Diligently and Effectively To Meet the Public Service Requirements in Each of the Five Census Tracts.

Utilizing Phase I support, Appalachian Wireless has generally been successful and on schedule in proceeding with construction in each of the Additional Census Tracts. Tower construction and "shakedown" testing has been completed at all 18 sites in the Tracts.²⁴ The following chart shows the current status of construction.

Status of Construction for Each Cellular Tower Site in the Additional Census Tracts					
SITE	CENSUS TRACT	COUNTY	SAC	ASR NO.	CONSTRUCTION DATE*
Ned	T21025920600	Breathitt	268001	1291999	2015-08-16
Haddix	T21025920600	Breathitt	268001	1298186	2016-06-10

²⁴ In general, "[s]hakedown testing, also known as site acceptance testing, is site testing that occurs when contractors have completed construction and installation work at a network site, but before a site is handed over to the carrier's operations team." RCR WIRELESS NEWS, *accessed at* <http://www.rcrwireless.com/20141202/test-and-measurement/shakedown-testing-wireless-networks-tag6>. Appalachian Wireless notes that, although construction and shakedown testing are complete, network integration work will not be finished for a few sites in the Additional Census Tracts by July 19, 2016.

SITE	CENSUS TRACT	COUNTY	SAC	ASR NO.	CONSTRUCTION DATE*
Copland	T21025920600	Breathitt	268001	1298187	2016-06-21
Wolf Coal	T21025920600	Breathitt	268001	1298188	2016-06-10
Pathfork	T21095971300	Harlan	268008	1292000	2015-08-26
Martins Fork	T21095971300	Harlan	268008	1291787	2015-06-08
Lenarue	T21095971300	Harlan	268008	1298184	2016-05-13
Cranks	T21095971300	Harlan	268008	1298185	2016-05-24
Hendricks	T21153970300	Magoffin	268012	1298564	2016-04-20
Cranes Nest	T21153970300	Magoffin	268012	1299356	2016-06-24
Carver	T21153970300	Magoffin	268012	1298563	2016-07-07
Arthurmabel	T21153970400	Magoffin	268013	1298565	2016-04-27
Trace Fork	T21153970400	Magoffin	268013	1298180	2016-07-12
Gunlock	T21153970400	Magoffin	268013	1298505	2016-07-16
Galdia	T21153970400	Magoffin	268013	1299634	2016-07-14
Relief	T21175950100	Morgan	268014	1298182	2016-05-03
Mima	T21175950100	Morgan	268014	1298901	2016-05-25
Elk Fork	T21175950100	Morgan	268014	1297907	2016-05-13
* This date reflects the date on which the tower under construction reached its maximum height.					

Much of the construction work for many of the 18 cellular tower sites was concentrated into the one-year period preceding the July 19, 2016, construction deadline, in part because of Appalachian Wireless's decision to seek approval from the Commission (which it received) to deploy 4G service, rather than 3G service, in the Additional Census Tracts.²⁵ This new commitment to provide 4G service required additional engineering analysis and network planning to ensure deployment that will comply with Phase I coverage and other requirements.²⁶

Nonetheless, Appalachian's construction schedule would have achieved full compliance with Phase I public interest obligations by the July 19 deadline, except for factors that caused unexpected delays, which Appalachian could not have reasonably anticipated, at sites in each of the five Additional Census Tracts. These factors are discussed in the following section.

²⁵ See note 2, and accompanying text, *supra*.

²⁶ As the above chart shows, construction at eight of the 18 sites was not completed until June or July of this year. Construction at an additional five sites was not completed until May of this year.

2. Unanticipated Delays Have Prevented Appalachian Wireless from Completing Drive Testing in Each of the Five Census Tracts.

Several factors forced delays, beyond Appalachian Wireless's control, in the construction schedule for at least one cellular tower site in each of the five Additional Census Tracts. These delays, in turn, have made it impossible for Appalachian to complete drive testing and to prepare and submit drive test reports to the Commission before the July 19, 2016, deadline.

First, exceptionally high levels of snowfall and rainfall in the eastern Kentucky region during 2016²⁷ slowed construction progress at cellular tower sites in each of the five Additional Census Tracts. These delays, which Appalachian could not have anticipated, pushed back completion of construction to an extent that foreclosed any opportunity to complete drive tests before the July 19 deadline.

Second, complex terrain issues led to the need to utilize gin poles instead of cranes for stacking the towers at tower sites in each of the Additional Census Tracts.²⁸ This issue, which affected more than 90 percent of the sites in the Tracts, created delays because there were not a sufficient number of contractors available that had the capability to use gin poles for tower construction at the Appalachian Wireless sites with difficult terrain.

²⁷ See Allison Rogers, "Record Breaking Snow Blankets Eastern Kentucky," WYMT MOUNTAIN NEWS (Jan. 23, 2016), *accessed at* <http://www.wymt.com/content/news/Record-breaking-snow-blankets-Eastern-Kentucky-366316521.html>; Chris Johnson, "Strong Storm Brings Rain, Then Snow to Eastern Kentucky," WYMT MOUNTAIN NEWS (Feb. 24, 2016), *accessed at* <http://www.wymt.com/content/news/Strong-storm-brings-rain-then-snow-to-Eastern-Kentucky--369930541.html>; Jason Myers, "Flash Flood Watch for Eastern Kentucky," WTQV.COM (May 2, 2016), *accessed at* <http://www.wtvq.com/2016/05/02/flash-flood-watch-for-eastern-kentucky/>; Garrett Wymer, "Heavy Rain Causes Flooding in Magoffin County," WKYT.COM (May 2, 2016), *accessed at* <http://www.wkyt.com/content/news/Heavy-rain-causes-flooding-in-Magoffin-County-377898491.html>.

²⁸ Gin poles facilitate tower construction in complex terrain, eliminating the need for any concrete foundations, cranes, or other heavy machinery. In general, a gin pole is a "straightforward solution to a site with little crane access." Jessica MilNeil, "I'll Take a Gin Pole, Straight Up," PRESERVATION TIMBER FRAMING.COM (Feb. 27, 2014), *accessed at* <http://www.preservationtimberframing.com/ill-take-a-gin-pole/>.

Third, changes in the Commission’s rules, which were adopted in August 2014 and took effect in July 2015, led to unanticipated increases in processing times for Appalachian Wireless’s registration of the construction of cellular towers in each of the five Additional Census Tracts. Specifically, the Commission amended Section 17.4 of its rules to require that owners of proposed cellular towers (and other antenna structures), at the time they submit FCC Form 854 to register the towers with the Commission, must also submit the final FAA “no hazard” determination.²⁹ Prior to this rule change, it was permissible for the FAA review and the Commission’s consideration of Form 854 applications to proceed concurrently. With its rule amendments, however, the Commission made clear that Form 854 applications would be delayed or disapproved if they were not accompanied by FAA “no hazard” determinations.³⁰

The additional delays caused by the Commission’s changes in its processing of Form 854 applications, which could not have been anticipated by Appalachian Wireless, led to average delays of 56 days for the 18 sites in the Additional Census Tracts. (As discussed in the following paragraphs, delays at some sites were considerably longer.³¹) The delays have had an impact on Appalachian’s efforts to meet its network coverage and reporting obligations by the July 19, 2016, deadline, and have contributed to the need to request a 90-day extension of the deadline.

²⁹ *2004 and 2006 Biennial Regulatory Reviews—Streamlining and Other Revisions of Parts 1 and 17 of the Commission’s Rules Governing Construction, Marking and Lighting of Antenna Structures*, WT Docket No. 10-88, *Amendments to Modernize and Clarify Part 17 of the Commission’s Rules Concerning Construction, Marking and Lighting of Antenna Structures*, RM 11349, Report and Order, 29 FCC Rcd 9787 (2014). The rules took effect on July 1, 2015. 80 Fed. Reg. 37552 (July 1, 2015).

³⁰ 47 C.F.R. § 17.4(d). In fact, Form 854 applicants could not initiate the online Form 854 submission process unless and until they could demonstrate that there was a final FAA “no hazard” determination for the construction site involved.

³¹ The longest duration of FAA processing was (1) 124 days for a site in Census Tract T21025920600; (2) 56 days for a site in Census Tract T21095971300; (3) 108 days for a site in Census Tract T21153970300; (4) 113 days for a site in Census Tract T21153970400; and (5) 66 days for a site in Census Tract T21175950100.

And, *fourth*, the delays caused by the Commission's FCC Form 854 processing changes, which prevented the Form 854 process from beginning until the FAA process was complete, were exacerbated by the fact that, in some cases, the FAA took an exceptionally long time to complete its "no hazard" review and determinations. These unexpected FAA delays adversely affected the scheduling and completion of Appalachian Wireless's towers at sites in three Census Tracts.

Specifically, it took the FAA (1) 124 days to issue a "no hazard" determination for tower construction at the Ned cellular tower site in the Breathitt County Census Tract (T21025920600); (2) 108 days for its determination for the Cranes Nest site in the Magoffin County Census Tract (T21153970300); and (3) 113 days for its determination for the Galdia site in the second Magoffin County Census Tract (T21153970400).

For the other 15 cellular tower sites in the Additional Census Tracts, the average FAA processing time was 44.7 days. The processing times in the Breathitt County and Magoffin County Census tracts, which averaged 115 days, were 157 percent longer than the average for the other 15 sites. These unanticipated FAA delays increased the difficulties faced by Appalachian Wireless in its attempt to meet the July 19, 2016, deadline for construction and reporting requirements, and provide an additional justification for Appalachian's waiver request for the three Census Tracts involved.

III. GRANT OF APPALACHIAN WIRELESS'S PETITION AND REQUEST FOR AN EXTENSION OF THE REVISED MOBILITY FUND PHASE I CONSTRUCTION DEADLINE IS SUPPORTED BY A SHOWING OF GOOD CAUSE AND WOULD SERVE THE PUBLIC INTEREST.

The Commission may waive its rules based upon a showing of good cause,³² and it may exercise its discretion to waive a rule where particular facts would make strict compliance with the

³² 47 C.F.R. § 1.3.

rule inconsistent with the public interest.³³ The Commission may also take into consideration, on a case-by-case basis, factors involving equity, hardship, or more effective implementation of overall policy.³⁴ “Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.”³⁵

Moreover, the Commission has the authority to carry out its responsibilities by promulgating rules of general application that establish the “public interest” for a broad range of cases. In adopting these general rules, however, the Commission is not relieved of its obligation to seek to advance the “public interest” in particular, individualized cases. Thus, the Commission’s authority to waive its rules resembles an obligation, in that it is a *sine quo non* to its ability to adopt otherwise inflexible rules.³⁶ This waiver authority is a necessary “safety valve” that makes the system work.³⁷

Granting Appalachian Wireless’s Petition will be consistent with the Commission’s policies relating to the Mobility Fund and to universal service generally. A grant of the Petition, espe-

³³ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”) (citing *WAIT Radio*, 418 F.2d at 1159).

³⁴ See, e.g., *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, *Sprint Communications Company, L.P. Petition for Waiver*, CC Docket No. 94-129, Order, DA 00-620 (rel. Mar. 17, 2000), at para. 4 (citing *WAIT Radio*, 418 F.2d at 1157).

³⁵ *Petitions for Waiver of Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, *Advantage Cellular Systems, Inc. Petition for Waiver of the FCC’s Universal Service Rules*, CC Docket No. 96-45, Order on Reconsideration, 31 FCC Rcd 3753, 3754 (para. 5 n.12) (2016) (citing *Northeast Cellular*, 897 F.2d at 1166).

³⁶ See, e.g., *U.S. Cellular, Petition for Limited Waiver and Request for Extension of Dates for Compliance with Mobility Fund Phase I Public Interest Obligations*, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 5, 2016) (“*U.S. Cellular Petition*”), at 12.

³⁷ See *WAIT Radio*, 418 F.2d at 1157, 1159 (noting that “[t]he limited safety valve [provided by the waiver process] permits a more rigorous adherence to an effective regulation”), cited in *Smith Bagley, Inc., Petition for Waiver, Expedited Action Requested*, AU Docket No. 14-78 (filed Aug. 8, 2014), at 4.

cially in the case of the Waiver Sites, will help to facilitate deployment of mobile broadband service in “rural areas that lack high-quality coverage, where citizens have no access to wireless network signals”³⁸ and will “provide residents of these areas with services comparable to those in urban areas of the country.”³⁹

Noting that “[m]illions of Americans live in communities where current-generation mobile service is unavailable, and millions more work in or travel through such areas[,]”⁴⁰ the Commission established the Mobility Fund “to help ensure the availability of mobile broadband across America,”⁴¹ and indicated specifically that Phase I support is intended “to immediately accelerate deployment of networks for mobile voice and broadband services in unserved areas.”⁴²

In taking this action, the Commission pointed to the fact that “significant mobility gaps remain a problem for residents, public safety first responders, businesses, public institutions, and travelers, particularly in rural areas. Such gaps impose significant disadvantages on those who live, work, and travel in these areas.”⁴³ Chairman Wheeler has explained that “[t]he Mobility Fund is the first universal service mechanism dedicated to ensuring availability of mobile broadband networks in areas where a private-sector business case is lacking.”⁴⁴

³⁸ Appalachian July 2015 Letter, Attach. at 1.

³⁹ *Id.*, Attach. at 2.

⁴⁰ *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17773 (para. 301) (2011) (“*CAF Order*”), *aff’d sub nom. In re FCC 11-161*, 703 F.3d 1015 (10th Cir. 2014).

⁴¹ *Id.*

⁴² *Id.* at 17675 (para. 28).

⁴³ *Id.* at 17773-74 (para. 301).

⁴⁴ Letter from Thomas Wheeler, Chairman, FCC, to Sen. Joseph Manchin (Nov. 24, 2015), at 1.

In order to facilitate the delivery of the benefits of advanced mobile broadband to consumers in rural areas where private-sector broadband deployment is unlikely ever to occur, the Commission in the *CAF Order* established the goal of “accelerat[ing] the deployment of 4G wireless networks in areas where it is cost effective to do so with one-time support.”⁴⁵ This accelerated deployment would be accomplished by “identify[ing] those areas where additional investment can make as large a difference as possible in improving current-generation mobile wireless coverage.”⁴⁶

In the circumstances affecting the Waiver Sites and the Additional Census Tracts, as discussed above, Appalachian Wireless has faced encumbrances beyond its control and has diligently worked to complete construction in a timely fashion. In fact, in the case of the Waiver Sites, Appalachian, as a result of substantial expenditures from its own capital funds combined with its Phase I support, needs to complete only two cellular tower sites in the Harlan County Census Tract, and only one additional site in the Floyd County Census Tract, in order to comply with the 75 percent network coverage requirement.

In the Additional Census Tracts, cellular tower site construction is complete, but an additional brief period of time is needed for the collection and submission of drive test data to the Commission (and for the completion of network integration at a few sites). In light of the progress Appalachian Wireless has already made, with respect to both the Waiver Sites and the Additional Census Tracts, a grant of the Petition will provide for a more effective implementation of the

⁴⁵ *CAF Order*, 26 FCC Rcd at 17781 (para. 322).

⁴⁶ *Id.*

Commission's Mobility Fund and other universal service policies than strict adherence to the Section 54.1006 construction deadlines and other requirements.

The Commission's universal service mechanisms have been crafted in pursuit of the goal of "ensur[ing] that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation."⁴⁷ A rigid adherence to the Section 54.1006 coverage deadline, and the imposition of penalties pursuant to Section 54.1006, would jeopardize this goal because, at a minimum, such actions would delay the availability of advanced mobile broadband networks to benefit consumers in areas served by the Waiver Sites. On the other hand, the Commission, by granting the Petition, will ensure that this goal will be advanced, and that mobile broadband service will be available in these areas far more rapidly.⁴⁸

In the case of the Additional Census Tracts, Appalachian Wireless has acted diligently and effectively to accelerate its 4G network deployment efforts, and, as discussed above, it has successfully completed construction and shakedown work at all 18 tower sites. Thus, Appalachian is now able to provide 4G broadband services to communities in the Additional Census Tracts, and is requesting a brief extension of the July 19, 2016, deadline so that it can provide drive test data showing that it has complied with the Phase I coverage requirements. In these circumstances, in which Appalachian has overcome various delays and has completed construction by the deadline,

⁴⁷ *Id.* at 17667 (para. 1).

⁴⁸ Appalachian Wireless also suggests that another basis for concluding that grant of the Petition in the case of the Waiver Sites, and extension of build-out deadlines to April 19, 2017, will be consistent with the public interest, is that the Commission recently approved new Phase I construction deadlines expiring on March 12, 2019. *Mobility Fund Phase I Support Authorized for 11 Winning Bids, Default on 35 Winning Bids Determined*, Public Notice, 31 FCC Rcd 1721, 1723 (Attach. A) (WTB, WCB 2016) (establishing construction deadlines for VTel Wireless, Inc., in various Vermont study areas). With the use of Phase I support now having been authorized by the Commission into the first quarter of 2019, it is reasonable to conclude that the public interest will also be served by granting Appalachian's request for a modest construction extension affecting only two Census Tracts. *See* U.S. Cellular Petition at 15 n.31.

neither equity nor the effective implementation of the Commission's overall Mobility Fund and universal service policies would be served by imposing any penalties pursuant to Section 54.1006(f) of the Commission's rules.

In addition, Appalachian Wireless has demonstrated good cause for granting the requested waivers because special circumstances make it inappropriate for the Commission to enforce the Section 54.1006 deadline.

With respect to the Harlan County Census Tract, Appalachian has shown that unforeseen and unpreventable delays in the regulatory review process have encumbered Appalachian's efforts to complete cellular tower construction at the Lynch and Benham sites by the July 19, 2016, deadline. With respect to the Floyd County Census Tract, Appalachian's continuing engineering analysis identified the need to add the Hippo site to its construction plan, and the need to increase the height of the tower at the Hippo site, in order to ensure compliance with the Phase I network coverage requirements and to achieve improved latency performance.

With respect to the Additional Census Tracts, Appalachian Wireless has shown good cause for a short 90-day extension of the July 19, 2016, deadline, because all construction and tower stacking have been completed at all of the 18 sites involved (and network integration has been completed at all but a few sites), but delays beyond Appalachian's control have prevented Appalachian from meeting the drive test requirements by the deadline.

Finally, denying Appalachian Wireless's Petition with respect to the Floyd and Harlan Census Tracts would not serve the public interest. The observation made by the mayor of Lynch that his city has "absolutely zero wireless service" highlights circumstances faced by many of the communities that will be served by the broadband network Appalachian is deploying with Phase I support. These communities will benefit from access to high-speed 4G broadband service, and a

denial of the Petition would risk delaying or denying these communities access to voice and broadband services.

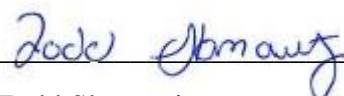
Moreover, denying Appalachian Wireless's request for a brief extension of the July 19, 2016, deadline in the case of the Additional Census Tracts would not serve the public interest because imposing monetary or other penalties pursuant to Section 54.1006(f) would be inequitable, and would not be an appropriate means of implementing the Commission's overall policies, in light of the successful efforts Appalachian has made, and the various delays Appalachian has overcome, to deploy a 4G network throughout the Additional Census Tracts.

IV. CONCLUSION.

Appalachian Wireless respectfully submits that it has demonstrated good cause for a grant of the waivers of the Commission's rules, and for the extension of the July 19, 2016, deadline for compliance with Mobility Fund Phase I network coverage requirements and other public interest obligations, and that a grant of the Petition will be in the public interest. Appalachian respectfully requests that the Petition be granted.

Respectfully submitted,

EAST KENTUCKY NETWORK, LLC
d/b/a APPALACHIAN WIRELESS

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Its Attorneys

July 19, 2016

EXHIBIT A

DECLARATION UNDER PENALTY OF PERJURY

DECLARATION UNDER PENALTY OF PERJURY

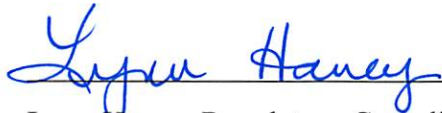
I, Lynn Haney, hereby declare under penalty of perjury as follows:

1. I am the Regulatory Compliance Director for East Kentucky Network, LLC d/b/a Appalachian Wireless ("Appalachian Wireless").

2. This Declaration is submitted in support of the Petition for Limited Waiver and Request for Extension of Compliance Deadlines for Mobility Fund Phase I Public Interest Obligations ("Petition"), to be filed with the Commission by Appalachian Wireless on July 19, 2016.

3. I declare under penalty of perjury, pursuant to Sections 502 and 503(b) of the Communications Act of 1934 and Section 1001 of Title 18, United States Code, that the facts and information contained in the foregoing Petition are true and correct to the best of my knowledge.

Executed on July 18, 2016

A handwritten signature in blue ink, reading "Lynn Haney", is written over a horizontal line.

Lynn Haney, Regulatory Compliance Director
East Kentucky Network, LLC d/b/a Appalachian Wireless