

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

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90
)
Challenge Process to Competitive Coverage)
in the Alternative Connect America Cost)
Model (A-CAM))

To: The Commission

**PETITION FOR LIMITED STAY OF VALLEY TELEPHONE
COOPERATIVE, INC. AND COPPER VALLEY TELEPHONE, INC.**

Valley Telephone Cooperative, Inc. (“Valley”) and its subsidiary Copper Valley Telephone, Inc. (“Copper”) (collectively, the “Valley Group”), by their attorneys and pursuant to Section 1.43 of the Commission’s rules,¹ hereby request that the Federal Communications Commission (“Commission”) stay the Wireline Competition Bureau’s (Bureau) finalization of the Alternative Connect America Cost Model (A-CAM v2.3) and imposition therein of a November 1, 2016 (90-day) deadline for rate-of-return carriers to elect model-based support, as announced in the Bureau’s August 3, 2016 A-CAM Offer Public Notice.² The Valley Group requests a limited stay of these actions only until the Commission acts on the Valley Group’s Emergency Application for Review, which is being filed concurrently and requests the Commission’s expedited review of the Bureau’s July 25, 2016 Order that concluded the A-CAM

¹ 47 C.F.R. § 1.43.

² *Wireline Competition Bureau Announces Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 16-869 (rel. August 3, 2016) (“A-CAM Offer Public Notice”).

streamlined challenge process and made final determinations regarding the broadband coverage data to be incorporated into the final version of the model for election purposes.³

Under the four-part test used by the Commission to determine whether a stay is warranted, a petitioner must demonstrate that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if the stay is not granted; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest favors granting a stay.⁴ As shown herein, the Valley Group meets the four prongs of this test and, therefore, the Commission should expeditiously grant this request for a stay.

I. BACKGROUND

In response to the April 7, 2016 Public Notice in this proceeding,⁵ the Valley Group on April 28, 2016 filed Comments⁶ in which it challenged and commented on the coverage data contained in the updated version of the A-CAM for census blocks in Study Area Codes (SACs) 452176 and 492176. The Comments pointed out that the A-CAM contains data showing *incorrectly* that these areas are served by 10/1 Mbps broadband service from Valley and Copper. The Order does not dispute that the A-CAM data is incorrect. Rather, it concludes that because the corrected data was provided to the Commission after the March 30, 2016 cutoff date

³ *Connect America Fund et al.*, WC Docket No. 10-90, DA 16-842 (rel. July 25, 2016) (“Order”). As set forth more fully in the Emergency Application for Review, review of the Order is requested only with respect to its specific treatment of the Valley Group and not with respect to determinations made by the Bureau in that Order with respect to any other carrier.

⁴ *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); see also *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

⁵ *Wireline Competition Bureau Releases Alternative Connect America Cost Model Version 2.2 and Illustrative Results and Commences Challenge Process to Competitive Coverage*, WC Docket No. 10-90, Public Notice, DA 16-378 (rel. Apr. 7, 2016).

⁶ See *Connect America Fund, Challenge Process to Competitive Coverage in the Alternative Connect America Cost Model (A-CAM)*, WC Docket No. 10-90, Valley Telephone Cooperative Inc. and Copper Valley Telephone, Inc. Challenge Comments (April 28, 2016) (“Comments”).

established by the Commission for updating A-CAM data, it would only consider the corrected Valley and Copper data if the Valley Group demonstrated good cause warranting waiver of the March 30, 2016 deadline. Although the Valley Group had demonstrated good cause for a waiver, the Bureau concluded that the fact that strict application of the cutoff deadline adversely “impacted [the Valley Group’s] ability to elect model-based and support and would harm the public interest by depriving them of the opportunity to receive support to which they otherwise would be entitled that would allow them to maximize their broadband service offerings to . . . these unserved areas” was not enough to justify a waiver.⁷

II. THE VALLEY GROUP IS LIKELY TO PREVAIL ON THE MERITS

The Bureau’s determination to knowingly include incorrect data in the A-CAM with respect to SACs 452176 and 492176 in the context of a streamlined challenge process used by the Commission to ensure that the model is accurate and reliable is in direct conflict with established Commission policy. The Bureau has acknowledged that this erroneous data submission was based on the Valley Group’s June 2015 Form 477 filing, which was based on a misinterpretation of the Form 477 filing instructions. The revised FCC Form 477 and associated instructions are relatively new, having only been put into use since September 2014, and have caused considerable confusion. Indeed, the Bureau specifically observed that “the record in this proceeding demonstrates that misinterpretation of the Form 477 filing instructions is not unusual” and that “quite a few parties” failed to file their Form 477 data correctly. After recognizing that its June 2015 Form 477 filing was incorrect, and attempting unsuccessfully to withdraw its erroneous filing with the assistance of Commission staff,⁸ the Valley Group timely

⁷ Order at ¶16.

⁸ See *Ex Parte Letter from Caressa D. Bennet, Counsel for Valley and Copper to Marlene H. Dortch, Secretary, FCC*, WC Docket No. 10-90, 3, 5 (filed June 9, 2016) (detailing and

filed comments in the A-CAM streamlined challenge process to formally challenge the incorrect data that the Bureau sought to include in the A-CAM with respect to SACs 452176 and 492176. Rather than accepting the corrected FCC Form 477 data, the Bureau instead chose to knowingly rely on incorrect FCC Form 477 data, thereby compromising the integrity of the A-CAM, and allow the model to be used with flawed data.

As detailed in the Valley Group's Emergency Application for Review, the Bureau's acceptance of false data is wholly inconsistent with the Commission directives regarding data accuracy in both the A-CAM and the A-CAM streamlined challenge process itself. The Commission expressly directed the Bureau "to review and incorporate as appropriate *any* Form 477 corrections to June 2015 data that are received in [the A-CAM] challenge process, so that these updates are reflected in the final version of the model that is released for purposes of the offer of support."⁹ By choosing to reject the inclusion of corrected data in the A-CAM submitted during the A-CAM challenge process and instead allowing the incorporation of data in that model it knows to be false, the Bureau has clearly acted in a manner inconsistent with established Commission policy and reversal of the Bureau's decision is warranted. Accordingly, the Valley Group is likely to prevail on the merits.

III. THE VALLEY GROUP WILL BE IRREPARABLY HARMED ABSENT A STAY

The Bureau's determination to preserve incorrect data in Valley and Copper's June 2015 Form 477 reports will cause irreparable harm to the Valley Group absent a stay of the A-CAM Offer Public Notice. The *Rate-of-Return Reform Order* concluded that model-based support would not be offered to any carrier that has deployed 10/1 broadband to 90 percent or more of its

providing correspondence with Bureau staff requesting withdrawal of incorrect Form 477 revisions).

⁹ *Rate-of-Return Reform Order* at ¶71 (emphasis added).

study areas based on June 2015 FCC Form 477 data.¹⁰ The Bureau’s determination in the Order to include the flawed data, which incorrectly shows Valley and Copper as each deploying 10/1 broadband to 90% or more of their respective study areas, will foreclose the Valley Group from access to model-based support and the certainty that such model-based support affords. Such funding and financial certainty would assure that Valley and Copper are able to provide voice and broadband service to their rural and remote customers and cooperative members, throughout a significant portion of their study areas. The Commission has emphasized that a carrier’s election of model-based support is “irrevocable.”¹¹ Absent a stay, the irrevocable decision to deprive the Valley Group’s cooperative members of the certainty of model-based support will hamstring the Valley Group’s ability to provide broadband services to a significant portion of its study areas.. Accordingly, the loss of additional support that would be provided by a choice to elect to receive model-based support will result in irreparable harm to both the Valley Group and its customers by denying broadband services to a significant portion of its study areas.

IV. INTERESTED PARTIES WILL NOT BE HARMED

No interested parties would be harmed by grant of the requested stay. The Valley Group seeks a brief stay only to the extent that it would permit Bureau staff to include corrective data in the final version of the A-CAM and then, if necessary, immediately re-impose a 90-day election deadline. Any minimal delay that would potentially result from the requested stay would not harm interested parties.

The requested stay also would have no impact on carriers with respect to the funding cap. Because rate-of-return carriers have not yet indicated by the 90-day election deadline whether they will elect model-based support, the current ceiling of the adopted model (i.e., the maximum

¹⁰ *Rate-of-Return Reform Order* at ¶66.

¹¹ *Rate-of-Return Reform Order* at ¶62; A-CAM Offer Public Notice at 2.

amount of CAF/A-CAM support a carrier may receive with the maximum number of associated locations) and funding cap have yet to be determined. It is only after carriers indicate their interest that the Bureau will total the amount of model-based support for electing carriers and determine the extent to which adjustments may need to be made to offered support amounts or deployment obligations in order to reconcile the funding budget with high demand. Accordingly, grant of the requested stay will not harm interested parties.

V. THE PUBLIC INTEREST FAVORS GRANT OF THE STAY

The Bureau's decision not to include the Valley Group's corrected data in the A-CAM is inconsistent with the public interest. Grant of the requested stay would permit the Bureau to reverse its decision and finalize the A-CAM with correct data. Denial of the requested stay would affirm the Bureau's reliance on inaccurate data and deprive the rural consumers served by Valley and Copper of the certainty of broadband service that the customers of carriers whose A-CAM data is accurate will be able to receive. To harm such customers and the carriers who serve them is inconsistent with the public interest.

VI. CONCLUSION

For the reasons articulated above, the Valley Group satisfies the four prongs of the test to determine whether a stay is warranted. Accordingly, the Commission should stay the A-CAM Offer Public Notice's finalization of the A-CAM and imposition of a 90-day election deadline pending the consideration of the Valley Group's Emergency Application for Review.

Respectfully submitted,

/s/ Caressa D. Bennet

By: _____

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