

**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

**EMERGENCY APPLICATION FOR REVIEW OF VALLEY
TELEPHONE COOPERATIVE, INC. AND COPPER VALLEY TELEPHONE, INC.**

Valley Telephone Cooperative, Inc. (“Valley”) and its subsidiary Copper Valley Telephone, Inc. (“Copper”) (collectively, “Valley Group”), by their attorneys and pursuant to Section 1.115 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”),¹ hereby seek expedited review of the Wireline Competition Bureau (“Bureau”) Order in the above-captioned proceeding denying the request of the Valley Group that the Bureau update the Alternative Connect America Cost Model (“A-CAM”) to reflect correct data regarding the service provided by the Valley Group.² The Bureau’s action conflicts with established Commission policy and involves application of a precedent or policy which should be overturned or revised.³

¹ 47 C.F.R. § 1.115.

² *In the Matter of Connect America Fund*, Order, WC Docket No. 10-90, DA 16-842, rel. July 25, 2016 (Deputy Chief, Wireline Competition Bureau) (“Order”).

³ In accordance with Section 1.115(b)(1) of the Commission’s rules, the Valley Group requests that the Commission address whether the Bureau’s rejection of corrective information provided by the Valley Group in this proceeding and the Bureau’s denial of the Valley Group’s waiver request are inconsistent with established Commission policy and precedent, and should be overturned. 47 C.F.R. § 1.115(b)(1).

Based on its findings in the Order, the Bureau has now made final calculations of the offer of model-based support to rate-of-return carriers and released a public notice summarizing offer amounts and associated deployment obligations, which has triggered the 90-day deadline for carriers to indicate their intent to elect model-based support.⁴ Accordingly, in the absence of timely and expedited Commission action on this Emergency Application for Review, the Valley Group will be harmed by being denied the ability to opt into the A-CAM.⁵

I. BACKGROUND

In response to the April 7, 2016 Public Notice in this proceeding, 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 the Valley Group. 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 established by the Commission for updating A-CAM data, it would only consider the corrected Valley Group 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

⁴ *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”).

⁵ The Valley Group concurrently has filed a Petition for Limited Stay seeking a temporary stay of the finalization of the A-CAM and the 90-day election deadline pending the expedited disposition of the instant Emergency Application for Review.

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”).

[the Valley Group’s] ability to elect model-based 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 ORDER’S KNOWING RELIANCE ON INACCURATE DATA FOR THE A-CAM CONFLICTS WITH ESTABLISHED COMMISSION POLICY

The A-CAM was developed to extend broadband-capable networks to unserved locations. In order to do so, the A-CAM must be based on accurate data regarding existing broadband coverage. The FCC’s commitment to ensuring the accuracy and reliability of A-CAM data is well established.⁸ For example, the Commission previously “recognized the importance of accurate study area boundaries in using a model to calculate support for rate-of-return carriers. Whereas [the prior Connect America Cost Model] used a commercial data source, GeoResults, to determine study area boundaries for the price cap carriers, the Commission directed the Bureau to incorporate the results of the Bureau’s study area boundary data collection into A-CAM.”⁹ Moreover, the accuracy of the A-CAM is largely reliant on the accuracy of the underlying FCC Form 477 data, which was acknowledged after the switch from using State Broadband Initiative (“SBI”) and National Broadband Map (“NBM”) data to Form 477 data: “FCC Form 477 data offers several advantages over the SBI/NBM data. The Form 477 data collection is mandatory, and *Form 477 filers must certify to the accuracy of their data.*”¹⁰ Indeed, it was exactly for the purpose of ensuring the accuracy and reliability of such data that the Commission expressly directed the Bureau “to review and incorporate as

⁷ Order at ¶16.

⁸ See, e.g., *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., FCC 16-33 (rel. March 30, 2016) (“*Rate-of-Return Reform Order*”) at ¶40.

⁹ *Rate-of-Return Reform Order* at ¶40.

¹⁰ *Rate-of-Return Reform Order* at ¶45 (emphasis added).

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.”¹¹

In choosing to reject the inclusion of corrected data in its A-CAM, and instead incorporate in that model data that it knows to be incorrect, the Bureau has acted in a manner inconsistent with established Commission policy. Accordingly, the Commission should grant this Application for Review and direct the Bureau to correct the A-CAM data for the subject census blocks by incorporating the corrected data submitted by the Valley Group in its Comments.

III. THE BUREAU’S FAILURE TO CONSIDER EVIDENCE OF GOOD CAUSE FOR GRANT OF A WAIVER CONFLICTS WITH ESTABLISHED COMMISSION POLICY

In rejecting the Valley Group’s request for a waiver of the March 30, 2016 cutoff deadline for Form 477 data, the Bureau found that the Valley Group had not demonstrated good cause warranting waiver of the March 30 deadline. The Valley Group argued in support of a waiver that special circumstances exist in part because strict application of the cutoff deadline would impact the Valley Group’s ability to elect model-based support in SACs 452176 and 492176, thereby depriving it of the certainty of model-based support. Such support would allow Valley and Copper to maximize their broadband service offerings to these unserved areas and those rural Americans living and working in these areas. Maximizing broadband service to rural areas so that all Americans can reap the benefit of broadband availability is a critical public policy goal.¹²

¹¹ *Rate-of-Return Reform Order* at ¶71 (emphasis added).

¹² *Rate-of-Return Reform Order* at ¶¶20, 66, 394 (noting that model-based support is intended to spur new broadband deployment in rural areas and areas lacking service; and that “[a]ll of the

Notwithstanding the harm to the Valley Group and its customers that would result from denial of the requested waiver, the Bureau concluded that “[t]he fact that a routine correction in the future may well have affected support amounts for some carriers had they been recognized earlier is not grounds for a waiver.”¹³ Contrary to the Bureau’s conclusion, the Commission has routinely recognized economic harm resulting from the provision of corrected data after an applicable cutoff deadline to be grounds for a waiver. For example, in cases involving requests for waiver of deadlines to submit updated line counts for certain types of universal service support, the Commission has waived these deadlines to accept updated data after its procedural cutoff dates where the submitting carrier would lose universal service support in the absence of a waiver.¹⁴ The Commission has also granted waivers of its universal service rules in order to “ensure that consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, have access to telecommunications and information

rules that are adopted in [the *Rate-of-Return Reform Order*] are designed to work in unison to ensure the ubiquitous deployment of voice and broadband-capable networks to all Americans.”). *See also American Recovery and Reinvestment Act of 2009*, Pub. L. No. 111-5, 123 Stat. 115, 516, § 6001(k)(2)(D) (establishing the national broadband plan to ensure that all people of the United States have access to broadband capability).

¹³ Order at ¶ 6.

¹⁴ *See, e.g., Northeast Iowa Telephone Company*, Order, WC Docket No. 08-71 et al., DA 09-886 (rel. Apr. 21, 2009) (Acting Chief, Wireline Competition Bureau) (*Northeast Iowa*); *NPCR, Inc. Petition for Waiver of Section 54.802(a) of the Commission’s Rules*, Order, CC Docket No. 96-45, DA 07-110 (rel. Jan. 18, 2007) (Chief, Wireline Competition Bureau) (*NPCR*); *Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission’s Rules*, Order, CC Docket No. 96-45, DA 05-2829 (rel. Oct. 27, 2005) (Chief, Wireline Competition Bureau) (*Citizens*). *But see Petitions for Waiver of Universal Service High-Cost Filing Deadlines, USCOC of Cumberland, Inc. and Hardy Cellular Telephone Company Petition for Waiver of Sections 54.809(c), 54.904(d), 54.313(d) and 54.314(d) of the Commission’s Rules*, WC Docket No. 08-71, Memorandum Opinion and Order, FCC 16-71, (rel. June 8, 2006) (requiring strict adherence to filing deadlines for the new regime of certifications adopted in the *USF/ICC Transformation Order*). Though the Valley Group does not dispute submitting its corrected June 2015 FCC Form 477 data after the March 30, 2016 deadline, such data was timely submitted along with its Comments and waiver request by the A-CAM streamlined challenge process comment deadline.

services.”¹⁵ Without the certainty of model-based support, the Valley Group would lack the funding certainty to ensure the ability to make additional network investments that would allow it to extend and improve service to its remote and rural customer base, while maintaining their reasonable rates.¹⁶

Accordingly, the Bureau’s decision to deny the Valley Group’s waiver request conflicts with established Commission policy and case precedent, and should be overturned.

IV. THE BUREAU’S DECISION WAS ARBITRARY AND CAPRICIOUS

In strictly enforcing its cutoff date, the Bureau failed to consider the Valley Group’s argument that the purpose of the March 30, 2016 cutoff requirement was to establish certainty regarding coverage; it was *not* intended to preserve inaccurate data inadvertently filed prior to the cutoff. It also failed to consider that the underlying purpose of the cutoff date would therefore be frustrated by strict application in the instant case. By relying on data in the A-CAM that it knows to be inaccurate, the Bureau acted in an arbitrary and capricious manner. The Valley Group notes that Section 1.65 of the FCC’s rules makes all applicants for Commission authorizations responsible for the continuing accuracy and completeness of information provided to the Commission in pending applications or proceedings and requires them to provide the FCC with corrected information within 30 days. For the FCC to require regulated entities to ensure

¹⁵ *Smith Bagley, Inc., Petition for Waiver of Section 54.809(c) of the Commission’s Rules and Regulations*, Order, 16 FCC Rcd 15275, 15277, ¶7 (Common Carrier Bur. 2001).

¹⁶ *See Northeast Iowa* at para 4 (granting waiver of local switching support data submission reporting deadline where missed deadline would impact small carrier’s ability to continue to provide quality service to its customers at just, reasonable and affordable rates); *NPCR* at ¶7 (granting waiver of Interstate Access Support (IAS) line count reporting deadline where loss of funding that would result from strict enforcement of reporting deadline could “undermine carrier’s investments in its network, and thus its ability to ensure that customers have and maintain access to adequate services.”); *Citizens* at ¶8 (granting waiver of IAS line count deadline where loss of funding that would result from strict enforcement of reporting deadline could undermine network investment and ability to ensure customers access to adequate services).

the continuing accuracy of information, but itself intentionally disregard such corrected information when presented to it is nonsensical, and therefore clearly arbitrary and capricious.

The Order was also arbitrary and capricious by ignoring the evidence of harm to the Valley Group and its rural consumers that would result from denial of the waiver request, which would prevent Valley and Copper Valley from having the option of choosing to accept the offer of model-based support. “The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.”¹⁷ In its Order, the Bureau failed to recognize that the facts make strict compliance with its cutoff deadline inconsistent with the public interest, and also failed to take into account considerations of hardship, equity, and more effective implementation of overall policy on an individual basis. It was arbitrary and capricious for the Bureau to do so, and the Commission should therefore take the corrective action requested above.

V. THE BUREAU’S DECISION IS INCONSISTENT WITH THE PUBLIC INTEREST

In addition to being arbitrary and capricious, the Bureau’s action is inconsistent with the public interest. By relying on inaccurate data, the Bureau is depriving the rural consumers served by the Valley Group of the benefits of high speed 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, particularly considering the

¹⁷ *Citizens at ¶6* (citing *Northeast Cellular Telephone Co. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969)).

arbitrariness of enforcing a deadline designed to ensure accurate data and ignoring such data when properly presented in a proceeding designed to elicit such data.

VI. CONCLUSION

For the foregoing reasons, the Valley Group request that the Commission take the actions requested above to cure the defects of the Bureau's Order.

Respectfully submitted,

/s/ Caressa D. Bennet

By:

Caressa D. Bennet
Michael R. Bennet
Robert A. Silverman
Bennet & Bennet, PLLC
6124 MacArthur Boulevard
Bethesda, MD 20816
(202) 371-1500

*Counsel for Valley Telephone Cooperative Inc. and
Copper Valley Telephone Inc.*

August 5, 2016

Declaration of Steven Metts

I, Steven Metts, do hereby declare under penalty of perjury the following:

1. I am the Chief Executive Officer of Valley Telephone Cooperative, Inc., and Copper Valley Telephone, Inc.
2. I have read the foregoing Emergency Application for Review. I have personal knowledge of the facts set forth therein, and believe them to be true and correct.



Steven Metts

8/5/16

Date