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August 25, 2016

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Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RE: Petition for Reconsideration, Request for Review, and Request for Waiver of Terral Telephone Company, Inc.  
WC Docket No. 06-122

Dear Ms. Dortch:

Pursuant to §0.457 and §0.459 of the Commission's rules, Terral Telephone Company, Inc. ("the Company"), by its attorney, hereby requests that certain materials and information be withheld from public inspection. Specifically, the Company requests confidential treatment of information relating to the Company's revenues and USAC assessments (the "Confidential Information") contained in the attached pleading. As required by §0.459, a redacted version of the pleading has been filed in the above-referenced docket.

In support of its request for confidential treatment and pursuant to the requirements under § 0.459(b) of the Commission's rules, the Company states the following:

1. *Identification of the specific information for which confidential treatment is sought.*

The Confidential Information for which the Company seeks confidential treatment consists of revenue information in the body of the attached pleading identified by [CONFIDENTIAL] marks on either end of the designated information, as well as the Exhibits attached thereto, which contain sensitive financial information about the Company.

2. *Identification of the Commission proceeding in which the information was submitted or description of the circumstances giving rise to the submission.*

The Confidential Information is being submitted in support of a Request for Review of a

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Decision of the Administrator, pursuant to Section 54.719 of the Commission's rules.

- 3. Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.*

The Confidential Information is highly confidential and sensitive commercial and financial information which constitutes trade secrets or sensitive commercial and financial information that "would customarily be guarded from competitors,"<sup>1</sup> and is therefore exempted from mandatory disclosure under FOIA Exemption 4 and Section 0.457(d) of the Commission's rules.<sup>2</sup>

- 4. Explanation of the degree to which the information concerns a service that is subject to competition.*

The Confidential Information relates to voice and broadband services provided by the Company that are subject to competition from competitive local exchange carriers, cable television system operators, electric power utilities, fixed and mobile wireless service providers, and/or satellite carriers.

- 5. Explanation of how disclosure of the information could result in substantial competitive harm.*

Disclosure of the Confidential Information is likely to result in substantial competitive harm to the Company because the confidential information could provide competitors with commercially sensitive insights related to the Company's operations, service offerings, and costs.

- 6. Identification of any measures taken by the submitting party to prevent unauthorized disclosure.*

The Company does not make the Confidential Information or any of the information contained therein publically available in any way, and further limits internal access to key employees subject to strict non-disclosure obligations.

- 7. Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.*

The Company does not make the Confidential Information available to the public and it has not previously allowed disclosure of the Confidential Information to third parties that are not otherwise bound by confidentiality obligations.

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<sup>1</sup> *Id.* § 0.457(d)(2).

<sup>2</sup> 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

8. *Justification of the period during which the submitting party asserts that the material should not be available for public disclosure.*

The Confidential Information should be treated as confidential for an indefinite period, as the Company will always be subject to competition and the competitive harms associated with the disclosure of the Confidential Information.

In order to provide adequate protection from public disclosure, the Commission should strictly limit distribution of the Confidential Information within the Commission on a "need to know" basis and not allow any distribution outside of the Commission. In the event that any person or entity outside the Commission requests disclosure of the confidential information, the Company requests that it be so notified immediately so that it can oppose such request or take other action to safeguard its interests as it deems necessary.

Please direct any questions regarding this submission to the undersigned.

Respectfully submitted,

/s/ Mary J. Sisak

Mary J. Sisak  
Counsel for  
Terral Telephone Company, Inc.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Universal Service Contribution Methodology ) WC Docket No. 06-122  
 )  
Petition for Reconsideration, Request for Review, )  
and Request for Waiver of Terral Telephone )  
Company, Inc. )

To: Chief, Wireline Competition Bureau

**PETITION FOR RECONSIDERATION,  
REQUEST FOR REVIEW, AND REQUEST FOR WAIVER**

Terral Telephone Company, Inc. (Terral) (Filer ID 808926), hereby files a petition asking the Wireline Competition Bureau (WCB) to reconsider its dismissal without prejudice of Terral's request for review of a decision of the Universal Service Administrative Company (USAC) and request for waiver of the Commission's requirement to file Form 499-A within one year of the original due date of the filing. In the alternative, Terral asks the WCB to consider and grant Terral's revised Request for Review of USAC's decision and to waive 1) the requirement that requests for review of a USAC decision must be filed within sixty days of the decision; and 2) the Commission's requirement to file Form 499-A within one year of the original due date of the filing.

**Statement of Interest and Relief Sought**

On March 24, 2016, Terral timely filed a revision to its 2015 FCC Form 499-A, which was intended to revise its estimated revenues as filed in the 2015 FCC Form 499-A, to reflect Terral's actual revenues in its audited financial statement. When filing this revision, however, Terral incorrectly classified some revenues reported in the form, including incorrectly reporting

state universal service support funds as interstate end user revenues. On May 18, 2016, Terral attempted to correct the errors and requested USAC to accept a second revised 2015 Form 499-A on May 27, 2016. On June 2, 2016, USAC rejected Terral's second revised 2015 Form 499-A, indicating that Terral's revisions were received by USAC outside of the FCC's one year revision window. On July 6, 2016, Terral asked the WCB to review the decision of USAC and requested a waiver of the one-year filing window. On July 29, 2016, the WCB dismissed Terral's petition without prejudice, finding that Terral's petition did not comply with the filing requirements in Section 54.721 of the Commission's rules.

As a result of Terral's incorrect revised 2015 FCC Form 499-A, Terral's USF contribution amount increased from [BEGIN CONFIDENTIAL ██████████ END CONFIDENTIAL] Terral's obligations for the other funds also increased.

By this filing, Terral seeks to correct and modify its request for review of USAC's decision by, among other things, fully complying with Section 54.721 of the Commission's rules. Terral asks the WCB to waive the requirement that corrections to Form 499-A must be filed within one-year of the original filing due date<sup>1</sup> and the requirement that petitioners must seek review of a USAC decision within sixty days of USAC's denial.<sup>2</sup> With these corrections to its request for review of USAC's decision, Terral asks the WCB to reconsider its decision to dismiss Terral's petition without prejudice. Terral asks the WCB to rule on the merits of Terral's petition and to grant its petition and requests for waiver for good cause shown. Terral asks the WCB to

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<sup>1</sup> *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review-Streamlined Contributor Reporting Requirements Associated With Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Changes to the Board of Directors of the National Exchange Carrier Associations, Inc., CC Docket Nos. 96-45, 98-171, 97-21, Order, 20 FCC Rcd 1012 (2004) (One-Year Deadline Order).*

<sup>2</sup> 47 C.F.R. 54.720.

direct USAC to accept Terral's second revised 2015 Form 499-A and to adjust invoices and provide refunds as appropriate.

**Statement of the Facts**

Terral is a small incumbent local exchange carrier providing facilities-based telecommunications services to 130 access lines within a small rural area of Oklahoma. Due to its size, Terral does not have in-house personnel to prepare all required FCC filings, including USF reports. The Company engages the services of a third party consultant to extract the relevant data from Terral's financial records, compile the data and complete the relevant FCC forms for filing. An officer of the company reviews the filings before submission to the FCC. Terral's practice is to file an estimated 499-A for the current year in March. At the same time, Terral revises the previous year's 499-A revenue estimates to reflect Terral's actual revenues in its audited financial statement. Based on its interstate revenues, Terral's calculated USF Contributions always have been less than \$10,000 per year and, therefore, *de minimis*. As a result, Terral never has been required to pay USF Contributions to USAC.

On March 20, 2015, Terral filed the 2015 Form 499-A, which included revenue and income estimates based on prior years. In the March 20, 2015 Form 499-A, Terral reported estimated interstate revenue for federal universal service purposes of [BEGIN CONFIDENTIAL ██████████ END CONFIDENTIAL].<sup>3</sup> On March 24, 2016, Terral sought to revise the March 20, 2015 estimates with its actual revenue and income as reflected in its 2015 audited financial statements. However, the revised 499-A filed on March 24, 2016, which was intended only to revise the 2015 Form 499-A with actual revenue and income amounts, instead

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<sup>3</sup> See 2015 Form 499-A, line 405(d), 420(d) and 423(d), dated March 20, 2015, attached hereto as Exhibit 1.

also erroneously reported certain revenues.<sup>4</sup> Most significantly, state universal service amounts were reported as interstate retail end user revenue on line 405(d) of the form. Thus, instead of revising downward its interstate revenues reported on line 405(d) to [BEGIN

CONFIDENTIAL

[REDACTED] [END CONFIDENTIAL].<sup>5</sup> Terral's error changed its calculated USF Contributions to exceed \$10,000 and removed Terral from *de minimis* status. The error on Terral's revised Form 499-A has resulted in a USF contribution liability in the amount of [BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL] for the small company whereas the revenue amounts in the originally filed 2015 Form 499-A and the correct second revised 2015 Form 499-A show a \$0 USF liability for this period.

Terral did not become aware of this error until USAC issued an invoice in April 2016 based on the incorrect revenue amounts in the revised Form 499-A filed on March 24, 2016. Terral immediately attempted to correct this error and filed a second revised 2015 Form 499-A on May 18, 2016 with USAC.<sup>6</sup> Terral filed a request with USAC on May 27, 2016, to accept the second revised 2015 Form 499-A.<sup>7</sup> USAC denied Terral's request on June 2, 2016.<sup>8</sup>

On July 6, 2016, Terral, through outside counsel, asked the WCB to review USAC's denial of its request to correct the March 24, 2016 Form 499-A and to grant a waiver of the requirement to file corrections within one year of the original filing date. However, Terral's petition did not comply with the requirements of Section 54.721 of the Commission's rules. The

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<sup>4</sup> The revised Form 499-A contains errors in lines 304.1, 305.1, 315, 405 and 418 and the summations of these line items in Block 4-B and 5.

<sup>5</sup> See 2015 Form 499-A, line 405(d), 420(d) and 423(d), dated March 24, 2016, attached hereto as Exhibit 2.

<sup>6</sup> See second revised 2015 Form 499-A, line 405(d), 420(d) and 423(d), filed May 18, 2016, attached hereto as Exhibit 3.

<sup>7</sup> See Terral's request to USAC, dated May 27, 2016, attached hereto as Exhibit 4.

<sup>8</sup> See USAC's denial of Terral's request, dated June 2, 2016, attached hereto as Exhibit 5.

WCB dismissed Terral's petition without prejudice by Public Notice dated July 29, 2016. Terral was unable to file a corrected petition within the sixty-day time period prescribed by the Commission's rules for seeking review of a USAC decision, however, because that time period expired on August 2, 2016, only two business days after the WCB's action.

Terral requests that the Commission grant the requested relief and waive 1) the Commission's rule limiting revisions of Form 499-A to one-year from when the original form was due; and 2) the Commission's rule requiring appeals of a USAC decision to be filed within sixty days of a USAC denial. As demonstrated herein, good cause for grant of these waivers is shown because, given the circumstances, Terral's revenues show that it falls within *de minimis* status and strict compliance with the rules would remove Terral from *de minimis* status; Terral's error caused no impact on the USF fund; and denial of the waivers would result in disproportionate hardship to Terral and its customers.

**Question Presented for Review**

Terral submits the following question for FCC review:

Whether, following Commission precedent, Terral should be permitted to correct errors on its revised 2015 Form 499-A, where good cause exists to grant Terral's request because failure to correct the ministerial errors will remove Terral from *de minimis* status and impose disproportionate hardship; and grant of the request will not result in significant harm to the USF fund and is in the public interest.

**1. Good Cause Exists to Grant Terral's Petition**

The Commission may waive its rules for "good cause shown."<sup>9</sup> A waiver is appropriate "if special circumstances warrant a deviation from the general rule and such deviation will

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<sup>9</sup> 47C.F.R. § 1.3.

serve the public interest."<sup>10</sup> In considering waiver requests the Commission may "take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis."<sup>11</sup> The Commission has found that "waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule."<sup>12</sup>

Waiver is warranted in this case because a ministerial error removed Terral from *de minimis* status; the error does not result in harm to the USF fund; and Terral's errors result in a grossly inequitable contribution obligation and would impose a disproportionate hardship on Terral. Therefore, grant of Terral's instant request is in the public interest.

## **2. Waiver is Appropriate Where *De Minimis* Status is Affected**

The Commission has granted waivers of Form 499 revision deadlines when a ministerial error removed a petitioner from *de minimis* status for the affected years. Specifically, the WCB granted a waiver of the one-year filing deadline to both Experior Networks (Experior) and Coaxial Cable Television Corporation (Coaxial Cable) to allow them to correct errors made in Form 499-A, which resulted in them being incorrectly shown as over the threshold to qualify for *de minimis* status. In granting the requests, the WCB found that equitable considerations weighed in favor of granting the waiver request because each Petitioner "would have owed no contribution at all if it had filed correctly."<sup>13</sup> The WCB also found "[s]ince neither Petitioner was required to contribute to the Fund during the years at issue, their failure to file the Forms

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<sup>10</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

<sup>11</sup> See, *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972). ("*WAIT Radio*").

<sup>12</sup> *In the Matter of Universal Service Contribution Methodology Request for Waiver by Experior Networks Request for Review by Coaxial Cable Television Corporation of Decision of Universal Service Administrator, Order*, WC Docket No. 06-122, 30 FCC Rcd 4711 (May 2015) (*Experior Order*).

<sup>13</sup> *Experior Order* at ¶10.

499 on time caused minimal harm to the Fund."<sup>14</sup>

Similarly, equitable considerations also weigh in favor of granting Terral's requests. Terral also would have owed no contribution at all if it had correctly filed its revision to Form 499-A. In addition, because Terral made errors on the revised Form 499-A, which was filed shortly before the end of the one-year period allowed for corrections, it had no reasonable opportunity to correct its errors within the one-year period allowed by the Commission for corrections. The Commission has stated that a one-year deadline for submitting downward revisions to Form 499-A from the original due date of filing offers adequate time for filers to correct errors. However, this does not apply when the error is made on the revised filing.

**3. Grant of Terral's Petition Will Not Result in Significant Harm to the USF Fund**

The Commission has stated that the purpose of the one-year deadline for submitting revisions to the Form 499-A is "to help ensure the stability and sufficiency of the federal universal fund, improve the integrity of the universal service contribution methodology, and promote efficiency in administration of the universal service support mechanisms."<sup>15</sup> Grant of Terral's petition will not affect the stability and sufficiency of the fund or the integrity of the contribution methodology. There will be no harm to the USF Fund or the ability of the Administrator to project accurately the contribution base and the contribution factor because Terral has always had *de minimis* status and Terral's originally filed 2015 Form 499-A accurately showed that Terral's contribution would be *de minimis*. Therefore, USAC did not rely on any contribution from Terral in calculating the contribution base and factor for 2015. In addition, Terral promptly notified USAC of the error in its revised Form 499-A after the April USF invoice was received. Accordingly, as the WCB found in the *Experior Order*, grant of Terral's

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<sup>14</sup> *Experior Order* at ¶10.

<sup>15</sup> *Experior Order* at ¶4.

petition will not result in significant harm to the USF Fund.

**4. Terral's Error Imposes a Disproportionate Hardship**

As shown, without a waiver of the Commission's rules and grant of this petition, Terral has been assessed and required to pay [BEGIN CONFIDENTIAL ██████████] END CONFIDENTIAL] in USF contributions, when its correct data would result in a USF contribution of \$0. This is greater than Terral's total retail interstate revenues for 2015. For a company of Terral's size, this represents a substantial sum that is needed to provide and maintain service to its customers.<sup>16</sup>

The Commission has granted other waiver requests where an error in reporting revenue caused a financial impact to the petitioner that was similar to or even less significant than the impact to Terral. For example, in *Ascent Media*, the filer's reporting error led to invoices that were ten times the company's typical monthly invoice, in addition to interest and penalties.<sup>17</sup> Similarly, in *American Broadband*, an error increased the filer's projected revenues, leading to USF contribution invoices for the relevant quarter to be ten times what they should have been.<sup>18</sup> In *Aventure*, an error in reporting projected end-user telecommunications revenues led to an invoice that was nearly twenty times as large as the amount that the filer should have owed.<sup>19</sup> As

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<sup>16</sup> With the increased payments to the other funds and increased regulatory fees, Terral's total increase in federal obligations will be [BEGIN CONFIDENTIAL ██████████] END CONFIDENTIAL].

<sup>17</sup> *In the Matter of Universal Service Contribution Methodology; Petition for Reconsideration by Ascent Media Group, Inc.*, WC Docket No. 06-122, Order on Reconsideration, 28 FCC Rcd 6150 (2013) (*Ascent Media*).

<sup>18</sup> *In the Matter of Universal Service Contribution Methodology; Request for Review of a Decision of the Universal Service Administrator and Request for Waiver by American Broadband & Telecommunications*, WC Docket No. 06-122, Order, 28 FCC Rcd 10358 (2013) (*American Broadband*).

<sup>19</sup> *In the Matter of Federal-State Joint Board on Universal Service; Universal Service Contribution Methodology; Aventure Communications Technology, LLC*, Form 499 Filer ID: 825749 Request for Review of USAC Rejection Letter and Request for Waiver of USAC 45 Day

in these cases, the WCB should grant Terral's petition to prevent this grossly inequitable contribution obligation and disproportionate hardship on Terral.

**5. Grant of Terral's Petition is in the Public Interest**

The Commission adopted the one-year rule for downward revisions to Form 499 as a means to ensure the stability and sufficiency of the federal universal service fund and the integrity of the universal service contribution methodology, among other things. However, strict adherence to this rule in the instant situation is not necessary to further these goals. Rather, as shown, strict adherence to the rule will remove Terral from *de minimis* status and it will result in undue hardship on Terral. Terral also notes that because it always has had *de minimis* status, it does not assess a universal service charge on its end users. Thus, there will be no harm to end users by grant of this request.

Terral recognizes, however, that even under these circumstances, it is important to accurately file all Forms 499-A and revisions. To this end, Terral and its consultant are implementing additional review procedures and protections to prevent the types of errors that have afflicted Terral here.

Accordingly, the public interest will be served by allowing Terral to correct its ministerial error and file a second revised 2015 Form 499-A.

**Conclusion**

For the foregoing reasons, Terral respectfully requests that the WCB reconsider its dismissal without prejudice of Terral's request for review of a decision of the Universal Service Administrative Company (USAC) and request for waiver of the Commission's requirement to file Form 499-A within one year of the original due date of the filing. In the alternative, Terral

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*Revision Deadline, CC Docket No. 96-45; WC Docket No. 06-122, Order, 23 FCC Rcd 10096 (2008) (Aventure).*

asks the WCB to consider and grant Terral's revised Request for Review of USAC's decision and to waive 1) the requirement that requests for review of a USAC decision must be filed within sixty days of the decision; and 2) the Commission's requirement to file Form 499-A within one year of the original due date of the filing.

Respectfully submitted,

/s/Mary J. Sisak

Mary J. Sisak  
*Counsel for Terral Telephone Company, Inc.*

Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP  
2120 L Street NW (Suite 300)  
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Telephone: (202) 659-0830

Filed: August 25, 2016

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EXHIBIT 1

[REDACTED IN ITS ENTIRETY]

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EXHIBIT 2

[REDACTED IN ITS ENTIRETY]

REDACTED - FOR PUBLIC INSPECTION

REDACTED - FOR PUBLIC INSPECTION

EXHIBIT 3

[REDACTED IN ITS ENTIRETY]

REDACTED - FOR PUBLIC INSPECTION

REDACTED - FOR PUBLIC INSPECTION

EXHIBIT 4

[REDACTED IN ITS ENTIRETY]

REDACTED - FOR PUBLIC INSPECTION

REDACTED - FOR PUBLIC INSPECTION

EXHIBIT 5

[REDACTED IN ITS ENTIRETY]

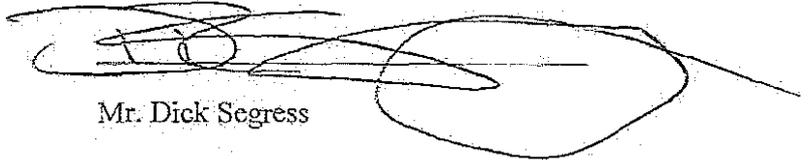
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AFFIDAVIT OF DICK SEGRESS

I, Dick Segress, hereby declare the following:

1. I am the President and General Manager of Terral Telephone Company, Inc. in Terral, Oklahoma. My business address is 9802 Morgan Rd., Yukon, OK 73099 and my phone number is (405) 602-2400.
2. My position includes, among other things, primary responsibility for the regulatory compliance of Terral Telephone Company, Inc., including compliance with Form 499-A.
3. The facts set forth in the foregoing Petition for Reconsideration, Request for Review, and Request for Waiver are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.



Mr. Dick Segress

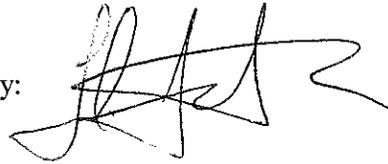
Executed this 25 day of August, 2016, in Terral, Oklahoma.

Certificate of Service

I hereby certify that on August 26, 2016, a copy of the forgoing **Petition for Reconsideration, Request for Review, and Request for Waiver of Terral Telephone Company, Inc.** was sent via hand delivery to the following:

Universal Service Administrative Company  
ATTN: Mr. Fred Theobald  
700 12th St NW #900  
Washington, DC 20005

By:

A handwritten signature in black ink, appearing to read 'S. Taillefer, Jr.', written over a horizontal line.

Salvatore Taillefer, Jr.  
Blooston, Mordkofsky, Dickens,  
Duffy, & Prendergast, LLP  
2120 L Street NW, Suite 300  
Washington, DC 20037