

Connect America Phase II Challenge Process Form
OMB Control Number 3060-1188
FCC Form 505

Filing Entity: PVT NetWorks, Inc.

FRN (if applicable): 0001612555

Name of Person Filling Out Form: Salvatore Taillefer, Jr.

Mailing Address of Person Filling Out Form: 2120 L Street NW, Suite 300

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Phone Number of Person Filling Out Form: 202-828-5562

Name of Person Certifying Data within Form: Dale Laman

Mailing Address of Person Certifying Data within Form: 4011 West Main Artesia, NM 88210-9566

Email Address of Person Certifying Data within Form: dlaman@pvt.com

Phone Number of Person Certifying Data within Form: 575-748-1241

Response to Challenge

Census Block 15 Digit FIPS Code	State	Name of Entity Making Initial Challenge	FRN of Entity Making Initial Challenge (if provided)	Insert X if Speed Criteria is at Issue	Insert X if Usage Allowance Criteria is at Issue	Insert X if Latency Criteria is at Issue	Insert X if Price Criteria is at Issue	Insert X if Voice Criteria is at Issue	Type of Supporting Evidence	Additional Comments	OMB Control Number 3000-1188
350150004012000	NM	Windstream		X	X	X	X	X	Advertisement Map; Plant Map; Declaration of Jimmy Liles; Statement of Ashley Segura		
350150007004288	NM	Windstream		X	X	X	X	X	Advertisement Map; Plant Map; Declaration of Jimmy Liles; Statement of Ashley Segura		
350150007004357	NM	Windstream		X	X	X	X	X	Advertisement Map; Plant Map; Declaration of Jimmy Liles; Statement of Ashley Segura; Request for Waiver		

OMB Control Number 3060-1188

Accuracy and Due Diligence Certification

All Filers Must Fill Out

By initialing below, I certify that all statements contained in the attached form are true and accurate to the best of my knowledge, and that I have undertaken due diligence to obtain knowledge regarding these claims.

Certifier's Initials: **ROL**
Date: 7-Nov-14

Notice of Challenge Certification

(Served to Unserved and Unserved to Served Challengers Fill Out One of the Following Blocks - Respondents Do Not Fill Out)

Service of Notice Successful

By initialing below, I certify that notice of this challenge has been served on all interested parties.

Certifier's Initials:
Date:

Service of Notice Unsuccessful

By initialing below I certify that, following a good faith effort, I was unable to serve notice of this challenge on all interested parties due to lack of information regarding the address of such parties.

Name of Party/Parties
that Could Not Be
Served:
Certifier's Initials:
Date:

The certifications on this page are subject to the penalties for false statements under 18 U.S.C. 1001.

Attachment 1

Statement of Jimmy Liles

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

In the Matter of)	
)	
Connect America Fund Phase II Challenge Process Subject Matter)	WC Docket No. 14-93
)	
Replies Sought in Connect America Phase II Challenge Process)	DA 14-1397
)	

Statement of Jimmy Liles

I, Jimmy Liles, state as follows:

1. I am the Network Operations Manager of PVT NetWorks, Inc. (“the Company”). My responsibilities include oversight of the Company’s network operations, including engineering and facilities management.
2. I personally prepared the information provided in the Company’s response regarding its network offerings, as described herein. I therefore have personal knowledge of the facts and information presented.
3. The Company offers both voice and broadband service within the three (3) census blocks challenged as unserved by Windstream, which includes a 6 Mbps downstream and 1 Mbps upstream broadband service with no data cap and a network latency of less than 100 ms.
4. As demonstrated in the attached Plant Maps, the Company has placed significant fiber optic cable and conduit systems in or adjacent to these census blocks. All facilities were placed with multiple access points and designed to serve an extensive area in a timely manner with state of the art electronics.

5. As further demonstrated by the attached Plant Maps, the Company serves one customer in census block 350150004012000, and is able to provide voice and broadband service up to 40 Mbps upstream and 40 Mbps downstream throughout the block.

6. Although the Company does not currently have any customers in census blocks 350150007004288 and 350150007004357, the Plant Maps also demonstrate that the Company has facilities (and customers) in the adjacent blocks and is able to provide voice and broadband service up to 40 Mbps upstream and 40 Mbps downstream throughout.

The foregoing is true and correct to the best of my knowledge, information, and belief.

Jimmy Liles

Dated: November 10, 2014

Attachment 2

Statement of Ashley Segura

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

In the Matter of)	
)	
Connect America Fund Phase II Challenge Process Subject Matter)	WC Docket No. 14-93
)	
Replies Sought in Connect America Phase II Challenge Process)	DA 14-1397
)	

Statement of Ashley Segura

I, Ashley Segura, state as follows:

1. I am the Customer Service Supervisor of PVT NetWorks, Inc. (“the Company”). My responsibilities include oversight of the Company’s customer records and customer service department.
2. I personally prepared the information provided in the Company’s response regarding its customer data, as described herein. I therefore have personal knowledge of the facts and information presented.
3. The Company offers several tiers of broadband service in the challenged census blocks, including a 6 Mbps downstream / 1 Mbps upstream offering for \$59.99, which meets the Commission’s latency, data cap, and urban rate comparability requirements.
4. As demonstrated in the attached service area map found on the Company’s website, the Company holds itself out as offering, and is willing to actually provide, service in the challenged census blocks. In addition, the Company engages from time to time in direct marketing to businesses in the challenged blocks.
5. I have reviewed the Company’s customer records and have determined that the Company serves one customer in census block 350150004012000. The Company has determined not to

provide a copy of the customer invoice in order to avoid the CPNI concerns voiced by the Bureau in the Connect America Phase II Challenge Process Guide.

6. Although the Company does not currently have any customers in census blocks 350150007004288 and 350150007004357, as noted above the Company offers voice and broadband service throughout the challenged blocks and has multiple customers in the adjacent blocks. These blocks are sparsely populated by business addresses, and have no residential structures.

The foregoing is true and correct to the best of my knowledge, information, and belief.

Ashley Segura

Dated: November 10, 2014

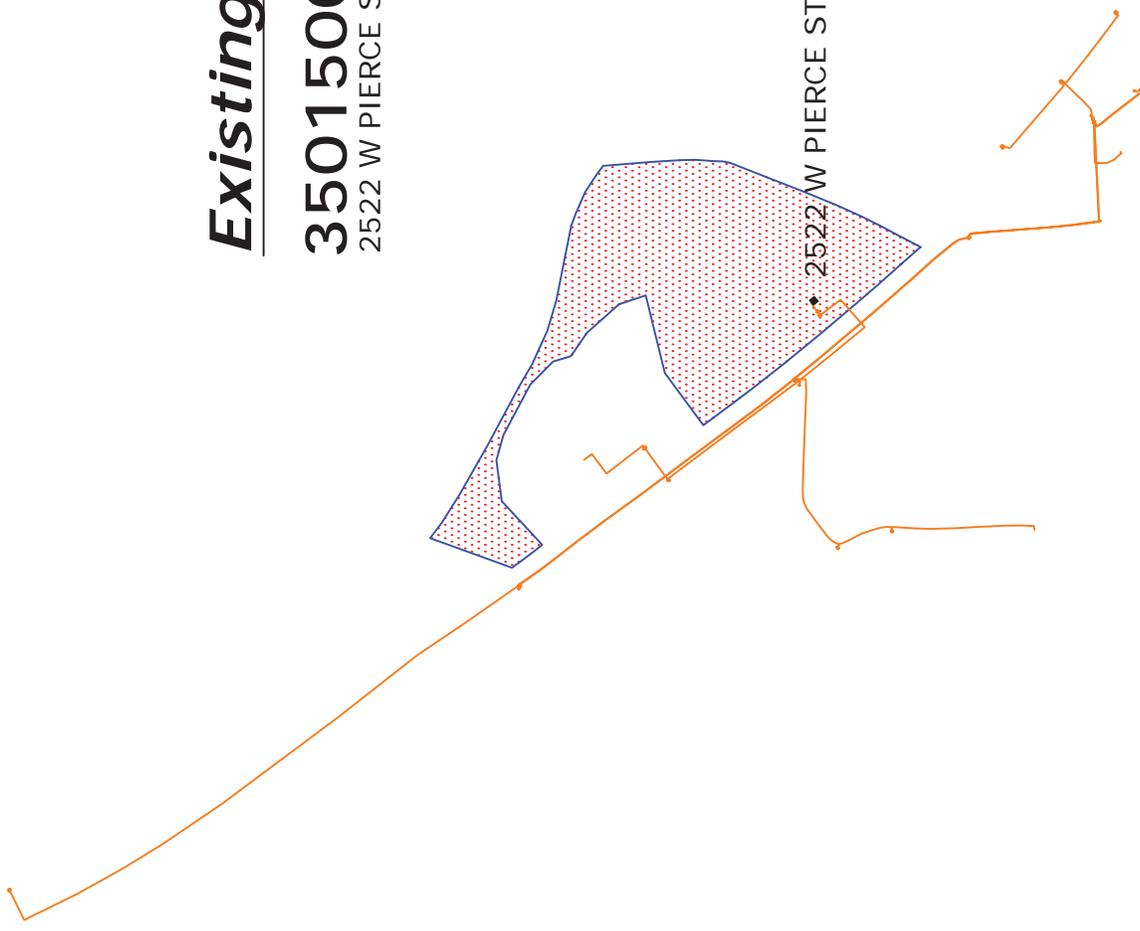
Attachment 3

Plant Maps



Existing Services

350150004012000
2522 W PIERCE ST



Census Block with existing service



Existing Facilities



PWT

Census Blocks with existing facilities

Existing Facilities

Existing Services

350150007004278

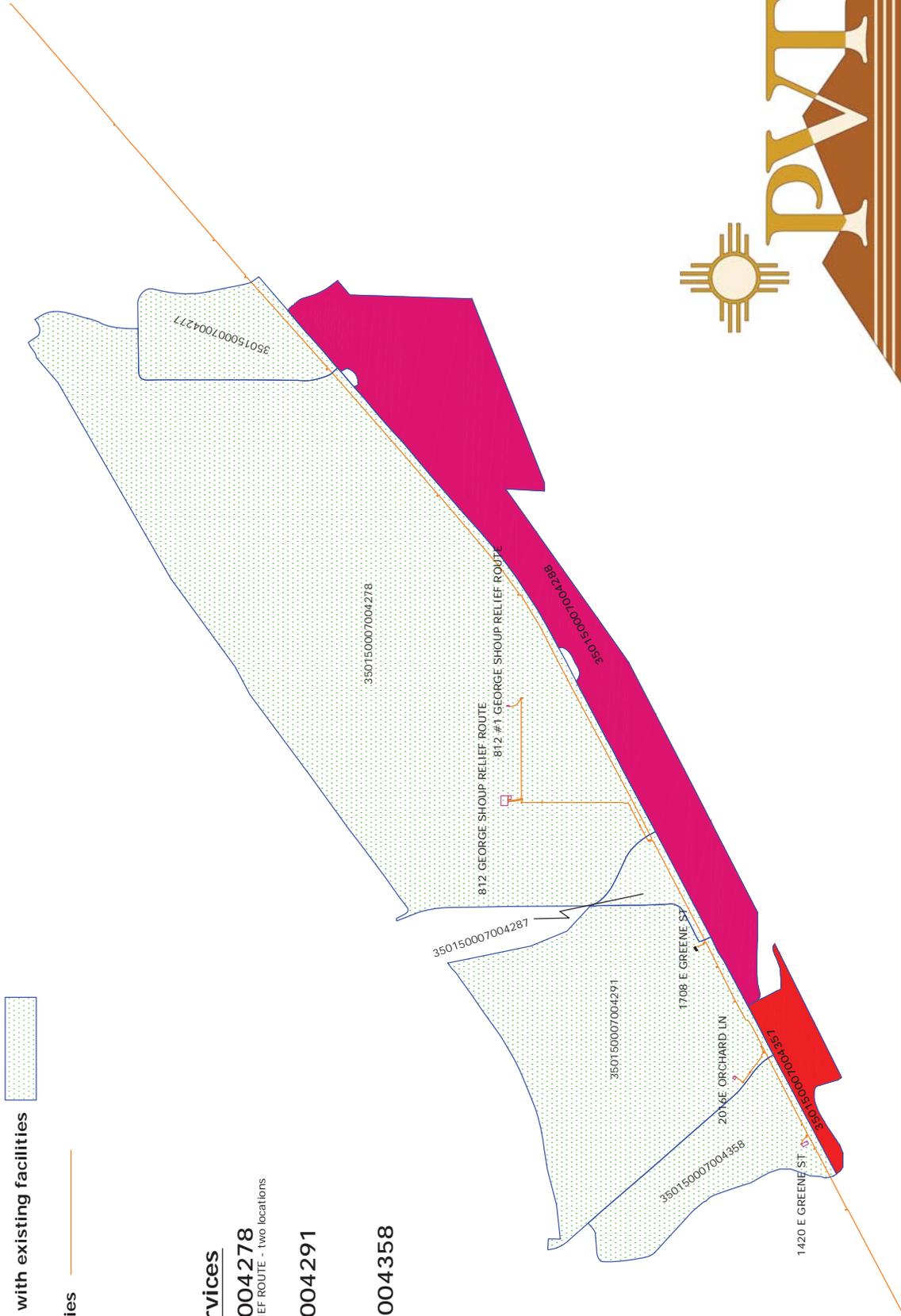
812 GEORGE SHOUP RELIEF ROUTE - two locations

350150007004291

1708 E GREENE ST
2016E ORCHARD LN

350150007004358

1420 E GREENE ST



PWT

Attachment 4
Advertisement Map

Attachment 5
Request for Waiver

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

In the Matter of)	
)	
Connect America Fund Phase II Challenge)	WC Docket No. 14-93
Process Subject Matter)	
)	
Replies Sought in Connect America Phase II)	DA 14-1397
Challenge Process)	
)	

**REQUEST FOR LIMITED WAIVER OF
CONNECT AMERICA FUND PHASE II EVIDENTIARY REQUIREMENT**

PVT NetWorks, Inc. (“the Company”), by its attorney and pursuant to Section 1.3 of the Commission's Rules,¹ requests a limited waiver of the Wireline Competition Bureau’s (“Bureau”) evidentiary requirement that parties challenging or responding to challenges must produce evidence of current or former customers in a census block in order to establish that the block is “served” for the purpose of determining whether it is available for Connect America Fund (“CAF”) Phase II support.

In the Company’s case, two of the three challenged census blocks in which the Company makes service available do not have, and have not had, customers because the population density of the block is so low as to make service opportunities rare. Since the Company is presently capable of providing service to anyone requesting it in these blocks, making them available for CAF Phase II support would undermine the Commission’s determination that CAF funding should not be used to overbuild existing unsubsidized infrastructure. Accordingly, the Company seeks a waiver of the customer requirement because these blocks are nevertheless “served.”

¹ 47 C.F.R. 1.3.

Factual Background

The Company is an unsubsidized rural voice and broadband provider that serves approximately 3000 voice and broadband customers in rural New Mexico. Windstream has challenged the existence of voice and broadband service offerings by the Company in certain census blocks as part of the Connect America Phase II Challenge Process initiated by the Commission. As demonstrated in the Company's response to Windstream's challenge, the Company has deployed physical network plant assets capable of providing voice and broadband service meeting the Commission's requirements throughout these blocks, and has a current customer in one. However, although all of the blocks in question have access to service, two blocks do not have current or former customers. This is because these blocks have very low population density; indeed, there are only a few business structures and no residential structures in either. As a result, these blocks have no subscribers even though service is available.

Good Cause Exists for Waiver of the Customer Requirement

Section 1.3 of the Rules permits the Commission's rules to be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.² In addition, the Commission may take into account considerations of hardship, equity, and the effective implementation of public policy on an individual basis.³

² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

The Bureau waived the customer requirement several times in the initial round of the Connect America Phase II Challenge Process.⁴ In so doing, the Bureau explicitly recognized that the public interest would be served in waiving the requirement in circumstances such as these, where, “low population density ... explains[s] the lack of a current or former customer.”⁵

In the *USF/ICC Transformation Order* of 2011, the Commission determined that funding should not be directed to areas where unsubsidized competitors offer service.⁶ The rationale for this finding was a policy determination that CAF support should only be directed to areas where market forces have not provided sufficient incentives to deploy broadband already. In the Commission’s own words, “[w]e cannot and will not condone new investment subsidized by universal service funds to occur in areas that are already served by marketplace forces...”⁷ Further, subsidizing the deployment of facilities in areas where unsubsidized providers have already done so undermines competition and chills investment.

Good cause exists for the requested waiver because, as in the case of previous waivers, the lack of a customer or former customer is explained by the circumstances, and is not indicative of a lack of service. The census blocks in question are very rural areas with very low population density per census block, and as a result the number of potential customers is similarly low. Indeed, there are only a few commercial structures in either block, and neither block has any residential structures. The Commission’s stated

⁴ Public Notice, *Replies Sought in Connect America Phase II Challenge Process* WC Docket No. 10-90 and 14-93, DA 14-1397 (released September 26, 2014) at pages 3-4.

⁵ *Id.* at pages 3-4.

⁶ *In re Connect Am. Fund, Universal Service Reform – Mobility Fund et al.*, 26 FCC Rcd 17663, 17729 (F.C.C. 2011).

⁷ *In re Connect Am. Fund, Universal Service Reform - Mobility Fund et al.*, 29 FCC Rcd 7051, 7073 (F.C.C. 2014).

goal with CAF is to extend service to areas that do not have it. In the case where a census block currently has very few potential customers, the fact that a customer has not chosen to subscribe to an available service offering should not be considered indicative of a lack of service.

Conclusion

Good cause, as well as considerations equity and the effective implementation of the Commission's universal service policies, warrant grant of the Company's requested waiver of the customer requirement. The requested waiver is consistent with Commission and Bureau precedent, and is supported by the facts of the situation.

Respectfully submitted,

PVT NetWorks, Inc.

By:



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Salvatore Taillefer, Jr.

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Its Attorneys

Dated: November 10, 2014