

**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))	

**VALLEY TELEPHONE COOPERATIVE INC. AND
COPPER VALLEY TELEPHONE, INC.
CHALLENGE COMMENTS**

Valley Telephone Cooperative Inc. (“Valley”) (FRN 0001603042) and its subsidiary Copper Valley Telephone, Inc. (“Copper”) (FRN 0001593938), by their attorneys and pursuant to the Federal Communications Commission’s (“FCC” or “Commission”) April 7, 2016 Public Notice,¹ hereby challenge and comment on the coverage data contained in the updated version of the Alternative Connect America Cost Model (A-CAM) for census blocks in SACs 452176 and 492176 (as identified in Attachments A & B hereto). The A-CAM contains data showing that these areas are served by 10/1 Mbps broadband service from Valley and Copper. This data is incorrect and is hereby challenged.

Valley and Copper *do not* provide 10/1 Mbps broadband to 90 percent or more of their eligible locations. On August 26, 2015, Valley and Copper timely submitted FCC Form 477 data demonstrating that as of June 2015 they did not provide 10/1 Mbps broadband to 90 percent or

¹ *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).

more of their eligible locations. As discussed below, subsequent revisions inadvertently and incorrectly reported a change in this information.

Valley and Copper's initial June 2015 Form 477 filings on August 26, 2016 had correctly reported speeds of 5 Mbps downlink and 1 Mbps uplink for their DSL broadband service available in the census blocks within SACs 452176 and 492176. However, in the course of preparing their December 2015 Form 477 due March 1, 2016, Valley and Copper decided to revisit the data previously reported. On March 7, 2016 Valley and Copper revised these filings to report fixed broadband speeds of at least 20 Mbps downlink and 1.5 Mbps uplink with respect to their DSL service in *all* of the census blocks within SACs 452176 and 492176. Subsequently, Valley and Copper realized that they had misapplied the definition of "available" in the FCC Form 477 Instructions to their own circumstances and how certain service levels actually could be provisioned, and that the March 7, 2016 revisions wrongly reported and overstated the fixed broadband speeds available in SACs 452176 and 492176.

The definition of "available" in the FCC Form 477 Instructions provides that "[f]or purposes of this form, fixed broadband connections are available in a census block if the provider does, or could, within a service interval that is typical for that type of connection—that is, without an extraordinary commitment of resources—provision two-way data transmission to and from the Internet with advertised speeds exceeding 200 kbps in at least one direction to end-user premises in the census block."² The definition further clarifies that "[c]ompanies that would rely on the ordering or installation of a not-yet-leased circuit (including unbundled network elements defined in 47 C.F.R. § 51.319, TDM-based connections, or packet-based connections) to provide

² FCC Form 477, Local Telephone Competition and Broadband Reporting Instructions, OMB Control No. 3060-0816, 34, available at <https://transition.fcc.gov/form477/477inst.pdf>.

service in a census block not currently served should not treat that census block as having service available.”³

At the time the revisions were filed, Valley and Copper erroneously believed that DSL broadband service at 20/1.5 Mbps was available because they believed that it was *possible* to provide a DSL customer with broadband speeds as high as 20/1.5 Mbps upon request. However, the provision of 20/1.5 Mbps DSL broadband speeds actually would have required an extraordinary commitment of resources to build the facility to the customer and necessitated the customer desiring broadband to contribute financially to building the broadband facilities. So, while it could be available, it is not actually available without such a commitment and resources to do so.⁴ Therefore such service should not have been reported as “available.” Valley and Copper attempted unsuccessfully to withdraw their March 7, 2016 revisions. Instead, Valley and Copper have further revised their June 2015 Form 477 data (as well as their December 2015 Form 477 data, which had mirrored the erroneous data in the March 7, 2016 revisions) to reflect their actual available DSL broadband speeds of 5/1 Mbps.

In its *Rate-of-Return Reform Order*, the Commission decided to withhold model-based support to any carrier that has deployed 10/1 broadband to 90 percent or more of its eligible locations in a state, based on June 2015 FCC Form 477 data submitted as of the order’s March 30, 2016 release date.⁵ As a result of this cutoff, Valley and Copper’s most recent corrections will not be able to be incorporated into the A-CAM unless the Bureau corrects this data as part of this challenge proceeding.

³ *Id.*

⁴ Notably, neither Valley nor Copper actually have ever advertised its DSL broadband service at speeds above 5/1 Mbps.

⁵ See *Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order et al., FCC 16-33, ¶¶ 66* (rel. Mar. 30, 2016) (*Rate-of-Return Reform Order*).

In order to correct their June 2015 FCC Form 477 data, Valley and Copper have submitted further revisions to their June 2015 Form 477 reports and urges the Bureau to update the A-CAM with this most recent data. To the extent a waiver and/or extension are required because these further revisions fall after March 30, 2016, then alternatively and pursuant to Section 1.3 of the Commission's rules,⁶ Valley and Copper request that the Bureau grant a limited waiver and extension of the March 30, 2016 deadline to allow the coverage data in these further revisions to be included in the final version of the Alternative Connect America Cost Model (A-CAM).

Pursuant to Section 1.3 of its rules, the Commission may waive any provision of the rules for good cause or where, due to special circumstances, deviation from a rule would better serve the public interest and the Commission's purposes than strict enforcement of the rule.⁷ Special circumstances exist here because an otherwise routine reporting correction stands to impact Valley and Copper's ability to elect model-based support in SACs 452176 and 492176.⁸ The Commission's commitment to preserving the accuracy and reliability of Form 477 data and the A-CAM process is well established.⁹ It is for this reason that the Commission directed the Bureau to review and incorporate as appropriate any Form 477 corrections to June 2015 data that are received in the instant challenge process so that such updates would be reflected in the final

⁶ 47 C.F.R. § 1.3.

⁷ See 47 C.F.R. § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972)).

⁸ The purpose of the Commission's March 30, 2016 cutoff requirement was adopted to establish certainty regarding coverage; it was not intended to preserve inaccurate data inadvertently filed prior to the cutoff. The underlying purpose of the rule would therefore be frustrated by strict application in the instant case.

⁹ *Rate-of-Return Reform Order* at ¶45

version of the model released for purposes of the offer of support.¹⁰ By denying the requested limited waiver and extension, the Commission would be relying on data in the A-CAM that it knows to be inaccurate. Moreover, denying the requested limited waiver and extension would harm the public interest. Broadband customers in SACs 452176 and 492176 specifically would be harmed in the absence of a grant by having the Commission incorrectly deem them as “served” with 10/1 Mbps broadband. In so doing, the Commission would deprive Valley and Copper of the opportunity to receive support to which they would otherwise be entitled that would allow them to maximize their broadband service offerings to these unserved areas and those rural Americans living and working in these areas.

For the above-mentioned reasons, the Bureau should determine that the census blocks at issue should be given a final designation as unserved, and thus be eligible to receive A-CAM support.

Respectfully submitted,

/s/ Caressa D. Bennet

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April 28, 2016

¹⁰ *Rate-of-Return Reform Order at ¶71.*

DECLARATION

I, Steven Metts, Chief Executive Officer of Valley Telephone Cooperative, Inc., and Copper Valley Telephone, Inc., declare under penalty of perjury of the laws of the United States that the facts contained in the foregoing "VALLEY TELEPHONE COOPERATIVE INC. AND COPPER VALLEY TELEPHONE, INC. CHALLENGE COMMENTS" dated April 28, 2016 are true and correct to the best of my belief and knowledge.

A handwritten signature in black ink, appearing to read 'S Metts', with a horizontal line extending to the right from the end of the signature.

Steven Metts