

EX PARTE OR LATE FILED

Adrian Wright

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Petition for Waiver Filed by)
Copper Valley Telephone, Inc.)
Concerning Section 61.41(c) and the)
Definition of "Study Area" Contained in the)
Part 36 Appendix-Glossary of the Commission's Rules)

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MAY 21 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC: 96-45
AAD 93-93

To: Chief, Common Carrier Bureau

AMENDED PETITION FOR CLARIFICATION AND/OR RECONSIDERATION

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May 21, 1999

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SUMMARY

Valley Telephone Cooperative, Inc. (“Valley”), together with its affiliate, Copper Valley Telephone, Inc. (“Copper Valley”), amend their pending Petition for Clarification and/or Reconsideration to accommodate the changes in law, regulation, and evolving network cost conditions which have occurred in the more than four years which have passed since the original filing. Specifically, the Companies seek a declaration that upon the effective date of Section 54.305 of the Commission’s Rules, the Universal Service support calculation for Valley’s study area is properly calculated in accordance with the clear language of that rule notwithstanding the previous limitation imposed as a condition of the study area waiver. Alternatively, the Companies request that the cap be adjusted to reflect the substantial increase in investment which is required to provide service to the remote, low density areas they serve.

The situation now faced by Valley and Copper Valley is severe and requires immediate relief. Specifically, current cost recovery circumstances for the combined study area are so constrained that they cannot continue to generate investment capital internally, nor raise money from lenders. In fact, the Companies are having difficulty servicing their existing debt. The result is that critical infrastructure improvements needed to provide and maintain basic, reliable service cannot be made. Accordingly, the Companies request expeditious processing of this Amended Petition.

Congress directed the Commission to establish sufficient universal service support policies that, *inter alia*, lead to rates charged for services in rural and high cost areas that are reasonably comparable to charges for similar services offered in urban areas. The disparate treatment under which the Companies must currently operate leads to an overall cost recovery result, including rates for universal services, that are neither comparable to rates for services in non-rural areas nor to rates for similarly situated rural companies, and imposes cost recovery constraints that hinder the promotion of access to advanced services and modern networks. Grant of the Companies’ request is consistent with the goals and requirements of the 1996 Act.

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Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

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To: Chief, Common Carrier Bureau

AMENDED PETITION FOR CLARIFICATION AND/OR RECONSIDERATION

Valley Telephone Cooperative, Inc. ("Valley"), together with its affiliate, Copper Valley Telephone, Inc. ("Copper Valley"),¹ submit this amendment to their pending Petition² in order to accommodate the changes in law and regulation which have occurred in the more than four years which have passed since the original filing. Specifically, the Companies amend their Petition to seek a declaration that upon the effective date of Section 54.305 of the Commission's Rules,³ the Universal Service support calculation for Valley's study area is properly calculated in accordance with that rule notwithstanding the previous limitation imposed as a condition of the study area waiver. Alternatively, the Companies request that the cap be adjusted to reflect the

¹ Valley Telephone Cooperative, Inc., is a cooperative local exchange carrier ("LEC") owned by the customers it serves, and is the parent of Copper Valley. As a result of the *Memorandum Opinion and Order*, released February 21, 1995 by the Accounting and Audits Division ("AAD") of the Commission's Common Carrier Bureau ("Bureau") in DA 95-133 and AAD 93-93, 10 FCC Rcd 3373 (1995) ("*Waiver Order*"), Copper Valley and Valley operate as a combined study area in Arizona. This Amended Petition will refer to Copper Valley and Valley collectively as the "Joint Study Area LECs" or simply as the "Companies."

² See Petition for Clarification and/or Reconsideration filed by Copper Valley Telephone, Inc. on March 23, 1995 ("Petition").

³ 47 C.F.R. §54.305. This rule became effective January 1, 1998.

substantial increase in investment which has been and will be required to provide service to the remote, low density areas they serve. The Companies request expeditious processing of this Amended Petition.

I. BACKGROUND

A. Purchase of US West Exchanges

In July of 1993, Valley Telephone Cooperative, having contracted with US West to purchase four exchanges in Arizona with a total of approximately 4,000 access lines, filed the necessary request for study area waiver with the Commission as well as appropriate requests for approval with the Arizona Corporation Commission (“ACC”). The ACC issued its approval in September 1994 and the study area waiver was approved by the Commission in February 1995.⁴ The sale closed in April 1995 with Valley’s wholly owned subsidiary, Copper Valley Telephone, Inc., as the new owner and operator of the exchanges.

At the time of acquisition, all four exchanges were operated as remote switch wire centers from another U S West host. The long distance traffic between the rest of the world and the end users of the four exchanges was, and still is, routed via an outdated and now obsolete microwave radio system through the U S West network (“the Guthrie Peak radio site”).

Although the Companies were aware in 1995 that the facilities to be purchased were substandard,⁵ that the Bureau had imposed a limit on USF recovery, and that the Companies were required to deploy basic reliable telephone service to subscribers, they, nevertheless, fully expected that a rational network cost recovery application would be ultimately resolved

⁴ *Waiver Order.*

⁵ The Companies were not able to ascertain the exact state of the facilities until they took over operations.

consistent with the public interest. The Companies believed that rational cost recovery would be possible either by removal or modification of such limits or the implementation of a new USF plan, under which the reasonable high costs would be addressed.

The Companies included as an Attachment to the 1995 Petition projected cost data regarding the upgrades necessary to deploy basic service. The actual data provided herein effectively substantiates the Companies' projected costs provided to the Commission over four years ago.⁶ Absent regulatory relief, the Companies' current financial trend undoubtedly will continue.

At the time of acquisition in 1995, there was a severe level of held orders for service in the four exchanges. Some customers had been waiting for as long as a year to receive service. Much of the acquired U S West plant was either lead cable, open wire, or air core underground cable with an early 1960's vintage as well as subscriber carrier equipment no longer supported by the manufacturer.⁷

Copper Valley immediately began to address the service deficiency situation. By the end of 1995, Copper Valley had installed new cable plant facilities and its own digital host and remote switching offices, which successfully responded to all of the initial held orders, and had continued with the provisioning of new services. By the end of 1995, Copper Valley had invested \$1,399,000 in plant improvements for the four exchanges. By the end of first quarter 1999, this investment had grown to \$3,359,327. At the same time, Valley has invested \$5,657,605 in upgrades to its facilities for a study area total of \$9,016,932. All of the plant

⁶ Of course, the earlier information was necessarily preliminary and estimated.

⁷ Trouble reports for Copper Valley on an annual basis were over 3,000. Beginning in 1996, trouble reports decreased.

deployed was needed solely to meet minimum standards for the provision of basic voice grade telephone service.

Included in the planned activity for 1999 is a network reconfiguration plan to abandon the obsolete microwave radio system. The continued use of this radio system makes long distance service, including 911, highly vulnerable to service disruptions. Copper Valley is currently dependent on US West to maintain and to perform necessary adjustments on microwave equipment housed in a US West building. US West personnel have warned that the system could “crash” without any high probability that it could be restored. Accordingly, it is obviously a very high priority for Copper Valley to replace this arrangement with a modern and dependable network routing.

B. Limit on Universal Service Fund Support Condition of Study Area Waiver

The *Waiver Order* rejected Valley’s request that the four exchanges to be owned by its subsidiary be established as a new study area, although it did allow another purchaser in the same transaction to establish a new study area on the grounds that its existing telephone operations were in California instead of Arizona. The *Waiver Order* made the removal of the four exchanges from the US West study area subject to the condition that “absent explicit approval from us, future levels of USF support shall not exceed. . .current levels. . .”⁸ NECA was ordered not to distribute USF assistance exceeding the limitation.

The limitation in the *Waiver Order* relied upon the statement in the waiver request that the then loop costs of the four Copper Valley exchanges were less than 115% of the national

⁸ *Waiver Order* at para. 16.

average.⁹ No information was provided or requested as to the expected future loop costs of Copper Valley or Valley. The *Waiver Order* stated incorrectly that by requiring the new exchanges to be included in Valley's existing study area, USF support would be expected to decrease because the new exchanges would reduce the average loop cost.¹⁰

By the end of 2001, the Companies' return on investment will have declined from Valley's preacquisition level of 10.51% to 6.34% before fixed charges. After fixed charges, the result is a negative 2.89%.¹¹ Without the limitation on USF, the Companies would expect to earn a return of 9.58%, before debt service, in 2001. Because of the earnings shortfall, Copper Valley has not been able to secure additional loan funds and has had to limit its upgrade activity to the most critical service requests and the replacement of inoperable plant.

Unfortunately, the limit that has been placed on USF cost recovery has seriously impacted the ability of the Companies to continue with what are necessary upgrades just to meet routine service needs and to maintain reliability of basic telephone service. Because the cost is very high to extend service to customers in the rural areas of Arizona where the Companies provide service, without USF high cost support, the Companies must either curtail upgrade activity, or raise rates significantly to levels inconsistent with universal service principles of affordability and comparability.

The current R1 and B1 rates for Valley are \$13.75 and \$19.75, respectively. The current R1 and B1 rates for Copper Valley are \$12.40 and \$32.00, respectively.¹² The deficiency in total

⁹ See *Waiver Order* at para. 15, and *Id.* n. 31.

¹⁰ See *Petition* at page 4, n. 8, and Attachment 1 to the *Petition*.

¹¹ See Appendix A.

¹² These basic rate levels must be viewed in the context of the relative local calling scope and
(continued...)

study area cost recovery calculated at 11.25% rate of return and projected year 2001 revenues equals \$35.56/subscriber/month. Removal of the cap would produce an estimated \$8.58/subscriber/month, leaving the Companies to recover \$27.29/subscriber/month from intrastate sources.

The Companies demonstrate with audited 1998 results that, as a result of the current limit, several hundred thousand dollars of USF are foregone annually compared to the USF cost recovery that should be calculated according to the Companies' actual costs without the limitation. Even if the USF limit were removed, the Companies will still be required to obtain substantial revenue increases from intrastate sources to remedy its current financial distress.

The ability of the Companies to generate and attract capital has been compromised by the limit which treats the Companies in a discriminatory manner compared to other companies with identical characteristics. Without proper levels of USF cost recovery, the necessary capital projects are in jeopardy and the provision of reliable service is uncertain.

The waiver condition, as interpreted by NECA/USAC, results in rates which violate the principle established by Congress that rates should be comparable between urban and rural areas.¹³ The *Waiver Order* means that without permission from the Bureau, the original Valley/Copper Valley study area can never receive a level of USF cost recovery support that

¹²(...continued)

the additional toll charges that the customers of rural exchanges typically incur. The Companies average toll calling scope is approximately 300 other subscribers which typically does not include fire, police, schools, or commercial center. Copper Valley has one EAS arrangement which brings the calling scope of its exchanges to as much as 900. Moreover, the majority of the customers of the Companies must place toll calls for calling beyond their own exchange. By comparison, residential subscribers in metropolitan Phoenix pay \$13.43 per month to access at least 1 million subscribers, which equates to a dollar/subscriber ratio over 2000 times higher.

¹³ 47 U.S.C. §254.

exceeds the actual dollar level of USF which Valley alone received on an annual basis in 1995, no plant additions, upgrades, changes, etc. made by Valley or Copper Valley to ensure that basic service quality is provided to their 7,600 subscribers can ever be reflected in USF cost allocation without explicit approval from the Bureau. Accordingly, following the release of the *Waiver Order*, the Companies sought clarification and reconsideration of what they considered to be unjust and counter-productive conditions.¹⁴

C. Petition for Clarification and/or Reconsideration

In March 1995, four years and two months ago, the Companies asked the Chief of the Common Carrier Bureau to clarify that the limitation was not meant literally to prohibit Valley from forever receiving any increase in USF, as a result of its own increase in cost or number of loops, merely because its subsidiary had acquired the additional exchanges. Alternatively, the Companies asked that any such recommendation be reconsidered because it was without factual or policy basis.

The Petition included an analysis demonstrating that the *Waiver Order's* assumption that the addition of the four exchanges to the Valley study area would reduce the USF amount was incorrect. As stated therein, although the combined Valley study area expense adjustment per loop was \$167.66 for 1994, compared to \$475.33 for Valley alone, when multiplied by the combined total loops, the actual USF would increase. The 1998 cost per loop is \$587.49 which compares to the 1994 level of \$517.96.¹⁵

No oppositions were filed to the Petition, nevertheless, despite repeated inquiries and requests to Commission staff, no action has been taken on the Petition.

¹⁴ See Petition.

¹⁵ See Appendix A; see also n. 10 *supra*.

D. Subsequent Commission Rules Specifically Address Acquisitions

The *Waiver Order* acknowledged that the Commission was then in the process of considering revisions to its Universal Service Rules.¹⁶ Before that proceeding was completed, however, Congress passed the Telecommunications Act of 1996, which established detailed objectives, principles and procedures for Universal Service support and required the Commission to adopt implementing rules within 15 months. Among the revised rules adopted in May 1997 was Section 54.305 which provides in part:

. . . A carrier that has entered into a binding commitment to buy exchanges prior to May 7, 1997 will receive support for the newly acquired lines based upon the average cost of all of its lines, both those newly acquired and those it had prior to execution of the sales agreement.¹⁷

Despite the apparent straightforward application of this rule to Valley, NECA (and now USAC) have refused to provide the additional support to the Valley/Copper Valley study area on the apparent grounds that it is constrained by the *Waiver Order* never to increase support payments.

II. THE INTERIM LIMIT ON USF COST RECOVERY IMPOSED IN THE WAIVER ORDER HAS BEEN SUPERSEDED BY THE MAY 8, 1997 UNIVERSAL SERVICE RULES.

The Companies respectfully request that the Bureau confirm that the explicit universal service rules should be applied with respect to the combined study area of the Companies and that the rules effectively eliminate the conditions contained in the *Waiver Order*. The USF cost allocation and recovery should therefore be calculated consistent with the Companies' actual

¹⁶ See *Waiver Order* at n. 29, citing Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, 9 FCC Rcd 303 (1993).

¹⁷ 47 C.F.R. §54.305. See In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 12 FCC Rcd 8776, 8942 (1997), *Report and Order*, ("Universal Service Order").

combined operating investment and expenses in lieu of the limit imposed in the *Waiver Order*.¹⁸

The *Waiver Order* imposed a limit on Valley's post-acquisition USF draws to address the Bureau's apparent concerns over the impact that sales and acquisitions would have on the total USF and the distribution of the USF among qualifying LECs.¹⁹

The issues and cost recovery mechanics surrounding the treatment of acquired operating telephone property have now been examined, and explicit universal service rules were adopted in 1997 that directly address the issues. Accordingly, the Joint Study Area LECs request that the Bureau simply confirm that the limitations imposed in the *Waiver Order* are effectively eliminated with the application of the Section 54.305 universal service cost recovery support rules.²⁰

In numerous Orders involving similarly situated LECs, the AAD has stated that the imposed USF cost recovery limits were to be applied "for the interim" and that it is likely "that any conditions imposed pursuant to this analysis [as used in *Waiver Orders* to establish USF cost recovery limits] may be superseded by new USF rules before these conditions have any effect."²¹

¹⁸ See Appendix A.

¹⁹ *Waiver Order* at paras. 12 and 16. The Bureau's concern apparently was that the availability of USF would result in increased sales prices in acquisitions. Sale prices above book cost are not reflected in USF calculations, in the absence of specific approval of an acquisition adjustment, which the Companies have not requested.

²⁰ See 47 C.F.R. § 54.305.

²¹ In the Matter of BEK Communications I, Inc., et. al., Memorandum Opinion and Order, 11 FCC Rcd 10855 (1996) at para. 6 ("BEK Waiver Order"); See also In the Matter of Petition for Waivers Filed by Union Telephone Company, Inc. and US West Communications, Inc., Concerning Section 61.41(c)(2) and 69.3(e)(11) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd 1840 (1997); and In the Matter of Petition for Waivers Filed by Columbine Telephone Company, Inc., Silver Star Telephone Company, Inc., and US West Communications, Inc., Concerning Section 61.41(c)(2) and 69.3(e)(11) and the Definition of "Study Area"

(continued...)

In the May 8, 1997 *Report and Order*,²² the Commission explicitly addressed issues with respect to carriers acquiring telephone exchanges from unaffiliated carriers and adopted new rules that took effect on January 1, 1998, for the determination of ongoing universal service cost recovery support.²³ Consistent with the Bureau's expectations that new USF rules would alter the limits, Rule Section 54.305, as quoted above, was adopted May 7, 1997, and became effective January 1, 1998. There are no indications in the *Universal Service Order* or the text of the rule that the pre-May 7, 1997 applicability is limited to transactions pending at that time. To the contrary, the rule applies on its face to all binding commitments entered into before May 7, 1997, regardless of the timing of closing.

Copper Valley's binding commitment to buy exchanges from US West predates May 7, 1997. Therefore, according to the rule, USF support calculations should be "based upon the average cost of all lines, both those newly acquired [i.e., Copper Valley] and those it had prior to execution of the sales agreement [i.e., Valley]."²⁴ However, if the USF limitations imposed by the *Waiver Order* were to continue to apply to the Joint Study Area LECs, the USF that the Companies would receive would not be consistent with the prescribed rule. The Companies have shown that the actual 1998 USF cost recovery was less than the appropriate support based on the average cost of all lines for all periods into the future and would be less than sufficient as

²¹(...continued)

Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd 3622 (1997); In the Matters of Petitions Filed By Bryant Pond Telephone Company, et. al., *Memorandum Opinion and Order*, 12 FCC Rcd 1479 (1997).

²² *Universal Service Order*.

²³ *Id.* at para. 308.

²⁴ *Id.*

required by the Telecommunications Act of 1996.²⁵

Accordingly, the Companies request that the Bureau confirm the implementation and impact of the explicit rules consistent with the cited decisions. This action will provide necessary direction to the USAC.²⁶ With this confirmation, no further action would be necessary by the Bureau or the Companies with respect to USF cost recovery. With this action, the Companies will be treated under the USF rules in a manner consistent with the treatment of other rural, high-cost LECs.

III. IN THE ALTERNATIVE, THE BUREAU SHOULD ELIMINATE THE USF LIMIT IN FAVOR OF CALCULATIONS BASED ON ACTUAL OPERATING LOOP COST INVESTMENT AND EXPENSES.

In the *Waiver Order*, the Bureau froze the future level of Valley's annual USF support, "absent explicit approval from us."²⁷ The Companies show below why that approval should be granted. Copper Valley assumed the operation of the purchased exchanges and upgraded facilities in a continuing effort to make service available to all potential subscribers and to improve the quality and reliability of service to acceptable levels. Continued implementation of plans to deploy additional network facilities, however, requires the rational calculation of USF consistent with the manner in which the rules are applied to other rural exchanges. Accordingly, the Companies provide cost information with respect to ongoing operations and USF cost allocation and recovery for current year and projections for future years.²⁸ This information is

²⁵ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

²⁶ The Companies submit that NECA/USAC, with confirmation from the Bureau, would apply the rules as prescribed.

²⁷ *Waiver Order* at para.16.

²⁸ See Appendix A. To the extent any further data or support is reasonably required to substantiate this position, the Companies are willing to work with Bureau staff in resolving any
(continued...)

provided for the Bureau's review and in support of the elimination or adjustment of the current counter-productive cost recovery limit placed on the Joint Study Area LECs.

The Companies now have actual operational experience with the provision of services for the combined operations.²⁹ Elimination of the USF limit is now warranted. USF calculations for the Joint Study Area LECs should be based on updated actual loop cost data.³⁰

The AAD correctly recognized in numerous Orders granting waivers of study area boundaries to LECs acquiring exchanges that the data and the USF draw calculations were necessarily preliminary, and have afforded buyers situated similarly to Copper Valley the opportunity to submit revised data.³¹ The Companies maintain that the imposition of the limit was expected to be for an interim period while the Commission reviewed and revised its USF rules, initially under a USF proceeding the Commission had initiated prior to the 1996 Act, and thereafter according to CC Docket 96-45. The public interest now requires that carriers' cost

²⁸(...continued)
questions.

²⁹ *Id.*

³⁰ In conjunction with its original Petition, Copper Valley provided information regarding future expenses and investment for the purpose of assisting the Bureau in its evaluation of the impact that the request would have on USF distribution. Copper Valley initially intended for the acquired exchanges to be treated as a separate study area. Accordingly, Copper Valley focused its initial calculations of projected USF, including forecasted investment and expense information, on the to-be-acquired exchanges.

³¹ In numerous similar orders addressing acquired properties similar to that of Copper Valley, AAD stated that Buyers' USF draws could exceed the limits if, based on Buyers' submission of revised data, the FCC determined that such an increase was warranted. *See e.g., In the Matter of Petitions for Waivers Filed by Alenco Communications, Inc., et. al., Memorandum Opinion and Order*, 11 FCC Rcd 11477 (1996); *In the Matter of Petitions for Waivers Filed by Leaco Rural Telephone Cooperative, Inc., et. al., Memorandum Opinion and Order*, 11 FCC Rcd 8066 (1996). Further, AAD has also stated that if the buying LECs choose to submit the necessary post-upgrade information, the data would be evaluated on an expedited basis. *See e.g., In the Matter of Petitions for Waivers Filed by Accent Communications, Inc., et. al., Memorandum Opinion and Order*, 11 FCC Rcd 11513 (1996).

recovery for high loop costs be determined based on the actual loop costs as is the typical case for all other carriers. Enough time has elapsed, the Commission's and Congress' universal service policies can only be served now by ensuring that Copper Valley's and Valley's USF high loop cost recovery is properly calculated and reflective of the cost these LECs actually must recover. The Arizona Corporation Commission staff has reviewed the information supplied by the Companies and stated that it will support grant of their request.

IV. GRANT OF COPPER VALLEY'S REQUEST IS IN THE PUBLIC INTEREST AND IS CONSISTENT WITH THE GOALS AND REQUIREMENTS OF THE 1996 ACT.

Continued application of unrealistic USF caps essentially penalizes Copper Valley, its subscribers, its parent company, Valley, and Valley's cooperative members/customers for their decision to make additional service commitments to rural areas of Arizona by acquiring and upgrading the exchanges.

The effect of the cap is that the cost recovery result for Valley and its subscribers is worse than if Valley had never made additional universal service commitments to rural Arizona. Obviously, there is no impetus for an acquisition and it is counter-productive to the achievement of universal service goals if the consolidation of the acquired and existing study areas results in a reduction in the level of USF recovery compared to what is otherwise available. As a result of the limit and interpretation of the *Waiver Order*, the determination of USF associated with the previously existing Valley exchanges will be limited in perpetuity for no other reason other than the fact that the members of the Valley Cooperative decided to acquire four exchanges from US West that happen to be located in Arizona. The 1996 Act codified support mechanisms to preserve and advance universal service. Congress directed the Commission to establish sufficient universal service support policies that, *inter alia*, lead to rates charged for services in

rural and high cost areas that are reasonably comparable to charges for similar services offered in urban areas.³²

The costs of modern facilities is high in the areas served by Copper Valley and Valley. The Companies want to continue to upgrade their facilities to provide quality services consistent with the federal policies. However, the current cap imposes cost recovery not representative of Copper Valley's and Valley's actual costs. The current constraint on cost recovery impedes the Companies' plans to deploy evolving networks. Therefore, the disparate treatment under which the Companies must currently operate leads to an overall cost recovery result, including rates for universal services, that are neither comparable to rates for services in non-rural areas nor to rates for similarly situated rural companies. Moreover, the disparate treatment imposes cost recovery constraints that hinder the promotion of access to advanced services and modern networks.

The cost allocation and recovery rules currently in effect, and adopted under the 1996 Act, allow LECs with high cost levels to moderate the amount of costs allocated to the intrastate jurisdiction. The continued imposition of the limit imposed in the *Waiver Order* results in an extraordinary amount of loop costs allocated to the intrastate jurisdiction for Copper Valley and Valley.³³

All of these results are contrary to the requirements of the 1996 Act. Unreasonable cost recovery limits are counter-productive to the policy objectives of the 1996 Act. Accordingly, the

³² See, e.g., Section 254(b)(3) of the 1996 Act: "ACCESS IN RURAL AND HIGH COST AREAS.--- Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." Emphasis added.

³³ See Appendix A.

Bureau should remove the USF cap or, at the very least, modify the limit on annual USF disbursements. If the cap is not superseded by application of the explicit USF rules, then the limit should be eliminated and replaced with USF calculations based on cost levels that reflect actual ongoing operations. This action is required to promote the principles of universal service as adopted by Congress.

V. THE COMPANIES RESPECTFULLY REQUEST THAT THE BUREAU PROVIDE AN EXPEDITED RESPONSE TO THE ISSUES PRESENTED IN THIS REQUEST.

The Companies submit that the policy with respect to the limit imposed in the *Waiver Order* has now been resolved by the decision in CC Docket 96-45, which was initiated subsequent to the passage of the 1996 Act. Unfortunately, that resolution is not reflected in the apparent administrative plans of USAC, which took effect on January 1, 1998, concurrent with the new rules. Based on extent of time that has now passed, and the critical implications described herein, expeditious favorable action by the Bureau is required, consistent with the discussion herein.

VI. CONCLUSION

Consistent with this Amended Petition, the public interest will be served by an acknowledgment by the Bureau that the USF rules which took effect on January 1, 1998, supersede and nullify the USF limit imposed on the Valley/Copper Valley study area in the *Waiver Order*. In any event, the Bureau should eliminate the annual USF cost recovery limit. USF for the Joint Study Area LECs should be based on the realistic ongoing operating results provided herewith. Elimination of the improper USF limit will result in a rational level of interstate cost allocation consistent with the public interest, the intent of the Commission's rules, Copper Valley's and Valley's actual ongoing loop cost levels, and the policy principles outlined

by Congress in the 1996 Act. In the absence of such relief, the Companies financial situation will continue to deteriorate putting the provision of basic service at risk. Accordingly, good cause having been shown, Valley and Copper Valley respectfully request grant of this Amended Petition, on an expedited basis.

Respectfully submitted,

Valley Telephone Cooperative, Inc.
Copper Valley Telephone, Inc.

By:  _____

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May 21, 1999

**Valley Telephone Cooperative
Copper Valley Telephone Company
Appendix A**

Network Upgrades

		<u>VTC</u>	<u>CVTC</u>	<u>Total</u>
Completed	1995	1,751,397	1,400,000	3,151,397
	1996	1,506,000	188,000	1,694,000
	1997	864,000	681,000	1,545,000
	1998	980,000	490,000	1,470,000
	1999	556,208	600,327	1,156,535
	Subtotal	5,657,605	3,359,327	9,016,932
Planned	1999	813,200	699,000	1,512,200
	2000	804,020	3,575,150	4,379,170
Non-Budgeted		701,600	469,400	1,171,000
	Subtotal	2,318,820	4,743,550	7,062,370
Total		<u>7,976,425</u>	<u>8,102,877</u>	<u>16,079,302</u>

USF Shortfalls

<u>Cost Year</u>	<u>Revenue Year</u>	<u>Amount</u>	<u>Earnings</u>	<u>Earnings W/O Shortfall</u>	<u>Comments</u>
1995	1997	-	2.42%	2.42%	Acquisition Year
1996	1998	537,538	-0.85%	2.20%	1st Year Operating; USF Cap in Effect
1997	1999	234,312	-1.37%	-0.08%	
1998	2000	598,384	-2.39%	0.34%	Est Y2000 Effect Based on Audited FY 1998 books
1999	2001	762,703	-2.69%	0.55%	First projected USF amount; based on 1999 construction
		<u>2,132,937</u>			

**Additional State Revenues per Subscriber Required to
Achieve 11.25% Return on Total Company Rate Base**

Year 2001 (Based on 1999 Costs)

With USF Cap in Place \$ 35.56 per Subscriber per Month *

Lifting the Cap Eases Intrastate Cost Recovery Burden But Does NOT Lead to Overearning

Additional USF With Cap Lifted \$ 8.26 per Subscriber per Month *

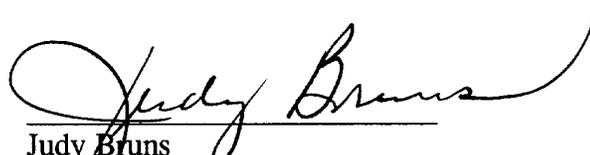
Additional Intrastate Revenue
Needed With Cap Lifted \$ 27.29 per Subscriber per Month *

* Calculated on Estimated 12/31/99 Subscriber Count of 7,687

DECLARATION OF JUDY BRUNS

I, Judy Bruns, General Manager of Valley Telephone Cooperative, Inc. ("Valley") and its affiliate, Copper Valley Telephone, Inc., do hereby declare under penalties of perjury that I have read the foregoing "Amended Petition for Clarification and/or Reconsideration" and the information contained therein regarding Valley and Copper Valley is true and accurate to the best of my knowledge, information, and belief.

Date 5/20/99



Judy Bruns
General Manager

CERTIFICATE OF SERVICE

I, Shelley Bryce, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Amended Petition for Clarification and/or Reconsideration" was served on this 21st day of May, 1999 by first class, U.S. Mail, postage prepaid to the following parties:


Shelley Bryce

Thomas Power *
Office of Chairman William Kennard
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, DC 20554

Susan Ness, Commissioner *
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, DC 20554

Linda Kinney *
Office of Commissioner Susan Ness
Federal Communications Commission
445 12th Street, SW, 8th Floor
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Sarah Whitesell *
Office of Commissioner Gloria Tristani
Federal Communications Commission
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Kevin Martin *
Office of Commissioner Harold Furchtgott-Roth
Federal Communications Commission
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Kyle Dixon *
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Lauren "Pete" Belvin
Telecommunications Subcommittee
Office of Senator John McCain
Chairman of Senate Commerce
Committee
227 Hart Senate Office Building
Washington, DC 20510

* Via Hand Delivery