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

In the matter of	)	
	)	
Valor Telecommunications of Texas, L.P.	)	CC Docket No. 96-45
	)	
Petition for Waiver of Section 54.305	)	
Of the Commission's Rules	)	

REPLY TO OPPOSITIONS TO PETITION FOR WAIVER OF SECTION 54.305 OF VALOR TELECOMMUNICATIONS OF TEXAS, L.P.

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SUMMARY

In its Petition, Valor requested that the Commission grant a waiver of Section 54.305 in order to allow Valor's rural customers to receive – and Valor to maintain – the quality services at affordable rates to which they are entitled under Section 254 of the 1996 Act. The Oppositions downplay Valor's unique circumstances, mischaracterize precedent, and attempt to inject extraneous issues into this proceeding. AT&T has conjured up an unprecedented test for waivers of Section 54.305 out of thin air. Furthermore, this petition is not about the funding needs of rural LECs versus wireless ETCs (the thrust of CTIA and Western Wireless's oppositions). Nor is it the appropriate forum for a collateral attack on Valor's rural status pursuant to 47 U.S.C. § 153(47) (also raised by CTIA and Western Wireless). Rather, the *only* issue at stake in this proceeding is whether Valor has demonstrated that precedent, policy, and equity all support the removal of its universal service cap.

First, a waiver of Section 54.305 is the best way to provide Valor with the necessary relief. The Commission has recognized that rural carriers purchasing high-cost exchanges should be entitled to uncapped support for new investments in recently-acquired exchanges. However, the Commission adopted the "safety valve" mechanism to implement this additional support after Valor began operations, and Valor's first year investments, based on rules then in place, were too high to permit Valor to take advantage of safety valve support. Because the safety valve rule offers no relief to Valor, a waiver of Section 54.305 is the best method that will provide Valor with the funds necessary to upgrade and maintain service to its rural customers.

Second, grant of the waiver is fully supported by Commission precedent removing universal service caps on similarly situated carriers. These precedents removed caps serving the same goals as Section 54.305, for the same purpose of restoring USF support to rural carriers,

once three years had passed. This precedent has never been overruled, and certainly applies to Valor since it acquired and operated exchanges before the safety valve rule was adopted. Furthermore, this precedent is the most appropriate for Valor's case, given that the purpose of the parent trap rule has been fully served during Valor's three years of operations.

Third, Valor's extenuating circumstances make the relief particularly appropriate. Valor currently receives 23 cents of monthly support per line, less than one tenth of what other price cap carriers receive. This low amount is in part the result of an unexpected change in GTE's support levels immediately prior to the close of the transaction, the result of pension cost reductions by GTE from which Valor received no benefits and which Valor could not have anticipated. Valor cannot obtain funding from other sources (including the safety valve) to meet these needs, and grant of the waiver will provide Valor with support that is substantial enough to enable the continued provision of quality services to its rural customers.

Fourth, the Commission should reject commenters' attempts to inject irrelevant issues into this proceeding. Valor has operated as a rural telephone company for three years, and has already demonstrated in a separate proceeding that Western Wireless' challenge to its rural self-certification is without merit. Furthermore, the waiver will not adversely impact the universal service fund, and the relative funding needs of rural LECs and wireless ETCs have no bearing on this petition. Finally, AT&T's attempt to limit universal service considerations only if it were proven that consumer rates would become unreasonable without the relief mischaracterizes the requirements of Section 254, and its novel "test" should not be applied to this case.

Grant of the waiver will put Valor into the same position as other rural companies. The purpose of the "parent trap" has been fully achieved. Continued application of the rule, or the safety valve rule, which provides no relief to Valor, would contradict the requirements of Section 254 and inequitably disadvantage Valor's rural customers.

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Valor Telecommunications of Texas, L.P. ("Valor") hereby replies to the Oppositions filed in the above-captioned proceeding.[1] In its Petition, Valor demonstrated that a waiver of the Section 54.305 cap on Valor's high-cost loop support was necessary to provide Valor with sufficient universal service support to deploy and maintain quality local telecommunications service in its rural service areas, as required by Section 254 of the Communications Act. The waiver is on all fours with Commission precedent waiving the parent trap rule in the past for other similarly situated carriers. The purpose of the parent trap rule, to prevent a seller from reaping profits from future universal service funding available to a buyer, was fulfilled in Valor's case. The waiver asks nothing more than to place Valor in a position comparable to other rural carriers providing service to high-cost areas. The theoretical availability of the new "safety

[1] Opposition of AT&T Corp. to Petition for Waiver of Section 54.305 (filed May 30, 2003) ("*AT&T Opposition*"); Opposition of Sprint Corporation (filed May 30, 2003) ("*Sprint Opposition*"); Western Wireless Comments in Opposition to Valor Petition for Waiver (filed May 30, 2003) ("*Western Wireless Opposition*"); Comments of the Cellular Telecommunications & Internet Association ("CTIA") (filed May 30, 2003) ("*CTIA Opposition*").

valve" mechanism is no answer to Valor's predicament: that rule was adopted after Valor began operations, providing Valor with no opportunity to plan its capital investments in order to qualify for support. As a result of unforeseen expenditure requirements, Valor's first year investments were necessarily so high as to prevent any compensation in later years (or at a maximum, only fifty percent of the greatly reduced difference in cost) under the safety valve rule. Therefore, the totality of Valor's unique circumstances and the universal service principles under Section 254 demonstrate that good cause has been shown to grant Valor's waiver.

I. BECAUSE OF VALOR'S UNIQUE CIRCUMSTANCES, GRANT OF THE WAIVER IS THE BEST WAY TO FULFILL THE COMMISSION'S MANDATE TO PROMOTE QUALITY SERVICES TO VALOR'S RURAL CUSTOMERS

Section 254(b)(3) of the 1996 Act provides that consumers in rural and high cost areas "should have access to 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."[2] In considering the waiver, the Commission must be guided by this overarching objective, which is the fundamental purpose underlying Section 54.305 in particular and the high-cost loop support mechanism in general.

Due to circumstances surrounding its initial formation and first three years of operation, Valor has been placed in a uniquely disadvantaged position in comparison with other rural carriers. As demonstrated below, Valor's support levels are unusually low compared to its high costs, and the very measure that the Commission adopted to provide relief in this situation does not apply because Valor began operating its high-cost exchanges prior to the adoption of that

[2] 47 U.S.C. § 254(b)(3). *See also* 47 U.S.C. § 254(b)(1) ("Quality services should be available at just, reasonable, and affordable rates").

mechanism. Therefore, the removal of Valor's cap is the best method of placing the company on similar footing with other rural carriers and permitting Valor to make continued investments to maintain and expand quality services for its customers. Valor's rural customers will experience levels of service that will increasingly lag behind that in urban areas if the Commission denies the requested relief. Such a result is inconsistent with Section 254(b) and will inequitably disadvantage Valor's rural customers.

A. Strict Application of the Safety Valve Rules to Valor Will Not Serve the Purpose of 54.305, Nor Be Equitable

Valor explained in its Petition that a waiver of Section 54.305 is needed because funding under the Commission's "safety valve" mechanism will not accurately reflect the level of investment required to modernize and upgrade its network.[3] Sprint and CTIA nevertheless assert, without support, that the safety valve mechanism offers sufficient high-cost support to Valor.[4] AT&T recognizes that safety valve does not provide sufficient support, but insists that Valor should nevertheless be held to a position of receiving no additional support for its new investments.[5] Given the purpose of the rule and Valor's unique circumstances, strict application of the safety valve rules to Valor will neither serve the purpose of Section 54.305, nor be equitable.

Section 54.305 was not intended to permanently prevent rural carriers which acquire high-cost exchanges from receiving needed support for new investments. The Commission adopted the rule in 1997 as a "stopgap" measure until it completed the transition to a support

[3] Valor Telecommunications of Texas, L.P., Petition for Waiver of Section 54.305 (filed April 11, 2003) at 12 ("*Petition*").

[4] *Sprint Opposition* at 2; *CTIA Opposition* at 9.

[5] *AT&T Opposition* at 6.

mechanism based on forward-looking economic costs for both rural and non-rural carriers.[6] At that time, the Commission did not anticipate that the transition would take more than four years.[7] When the Commission decided to retain a (modified) embedded cost mechanism for rural carriers in 2001, however, it recognized that rural carriers acquiring high-cost exchanges should not be bound indefinitely to receiving *only* the limited support provided by Section 54.305:

> We agree with the Rural Task Force, the Joint Board, and several commenters that we should provide additional support to rural carriers that acquire high-cost exchanges and make post-transaction investments to enhance network infrastructure…. We recognize that the section 54.305 of our rules may have some unintended consequences. Specifically, the operation of section 54.305 may discourage rural carriers from acquiring high-cost exchanges from carriers with low average costs and may prevent rural carriers from receiving support for new investments in recently-acquired high-cost exchanges. As a result, *we do not agree with commenters that support retaining section 54.305 without any modifications*. We conclude that section 54.305 should be retained, but modified to provide additional support to rural carriers that make substantial investment after acquiring exchanges.[8]

Thus, the Commission acknowledged that rural carriers should not be subject to the constraints of Section 54.305 without some mitigating method for obtaining additional support for investment in recently-acquired high-cost exchanges. Yet this is precisely the result that a strict application of the parent trap and safety valve rules would impose on Valor. Because Valor's capital investments were unusually high during calendar year 2001, its "index year,"[9] (its

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[6] *Federal-State Joint Board on Universal Service*, Thirteenth Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 24422, 24423 ¶ 2 (2000).

[7] *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11258 ¶ 28 (2001) (*"RTF Order"*) ("In 1997, when the Commission decided to continue using an embedded cost mechanism to determine high-cost loop support for rural carriers pending permanent reform … the Commission did not anticipate that the embedded cost mechanism for rural carriers would be in place for this long").

[8] *RTF Order* at 11284 ¶ 98 (emphasis added).

[9] *Petition* at 12-13.

capital expenditures of $56.6 million that year were roughly 43 percent greater than its 2002 costs), it would not receive any additional support under the safety valve rules. Such a result is not only unnecessary to serve the purpose of the parent trap rule (*see* Section II *infra*), but is contrary to the purpose of the safety valve rule: without a waiver of the rules, Valor's rural customers will suffer.

Furthermore, the strict application of the rules to Valor would be inequitable, given the safety valve rule was adopted halfway through Valor's index year. Valor completed the purchase of its exchanges and began operations in the third quarter of 2000. As discussed in the Petition (at 8-11), Valor's network and personnel required intensive initial investment to provide customers with quality services due to low teledensity, unexpected expenditures resulting from the GTE transaction, a severe ice storm in its largest market and customer and Texas PUC expectations. Valor was in the midst of addressing these issues when the safety valve rule was adopted in May 2001. Thus, Valor did not have a meaningful opportunity to take the safety valve rules into consideration when making its index year investment decisions, and in any case could not have stopped making necessary repairs and upgrades already set in motion simply because of the rule. Nor would such a move have benefited Valor's rural customers. Valor could not have relied or based investment decisions upon the provisions of a rule not adopted until May 2001. It would be inequitable and contrary to the purpose of the safety valve rule to prevent Valor from receiving any above-cap support based on investment decisions made prior to the enactment of the rule.

B. Due to Extenuating Circumstances, The Gap Between Valor's Support Level and Costs is Extremely Wide

Valor recognizes that universal service support is unlikely to rise to the level of actual costs for most exchanges transferred pursuant to Rule 54.305. However, in Valor's case, unforeseen circumstances have distorted both the cap (to artificially low levels) and costs (to unexpectedly high levels). The commenters insist that these circumstances should be discounted because they are not special or were "foreseeable."[10] As a threshold matter, the Commission's mandate to promote affordable, quality services in rural and high cost areas requires it to consider the impact of Valor's *present* circumstances upon its ability to provide such services, regardless of what Valor did or did not know at the time of the purchase. The Commission's mandate under Section 254 to promote universal service to end-users is not excused simply by a conclusion that particular circumstances were the responsibility of the company. In any case, these distorting factors were in fact unforeseeable and unforeseen. Most importantly, the present gap between support and costs, if not remedied, will cause service levels and service availability to Valor's rural customers to lag beyond those in urban areas, and thus provide an additional justification for the waiver.

1. Unforeseen Pension Cost Reductions by GTE Depressed Valor's Cap

Valor's USF support is limited to the support GTE received based on the average cost of all of its lines, even though Valor purchased some of GTE's highest cost exchanges. Thus, Rule 54.305 created an immediate mismatch between Valor's costs and universal service funding levels (in exchanges purchased from the second GTE study area, of which more than two-thirds have fewer than 1000 lines, Valor receives no support at all).[11] Furthermore, Valor's cap was frozen at GTE's unexpectedly low support levels at the time of purchase. Valor did not know that GTE's 1999 support levels (based on 1998 costs) would change immediately prior to the close of the transaction in 2000. The change was based on non-operating expense reductions

[10] *Western Wireless Opposition* at 7; *CTIA Opposition* at 14-15; *Sprint Opposition* at 3.

[11] *Petition* at 3 n.5.

incurred by the recognition of pension gains in 1999, which caused a $19.3 million variance in GTE's costs in Texas alone between 1998 and 1999.[12] Those gains, in turn, resulted directly from the inflated stock market conditions of 1999, which eliminated GTE's need to contribute to its pension fund that year and created pension expense credits (expense reductions) due to the increasing value of the assets then in the fund. These expense changes did not inure to Valor's benefit after the close of the transaction, were unforeseen and completely outside of Valor's control.

The consequence is that Valor currently receives extremely low levels of federal support compared to other rural carriers. Valor's support of 23 cents per line per month is less than a tenth of what comparable price cap carriers in Texas receive. What's more, Valor is essentially trapped with support levels reflecting an unattainable level of costs, the benefits of which it did not receive. The actual recipient of those benefits is not bound by such limitations, and in fact, could realize additional support based upon subsequent increases in those same pension costs driven by the current investment climate.

2. Valor's Network Required Immediate and Unexpectedly High Levels of Investment

Valor's costs, in contrast, are very high, due to the inheritance of a highly depreciated network, the overwhelmingly rural nature of its lines, the immediate need to invest in its exchanges due to state regulatory requirements and customer demands, and the incurrence of

[12] The average loop cost for GTE's Contel study area decreased from $346.44 in 1998 (the period considered for Valor's due diligence) to $299.47 in 1999 (the year whose costs formed the basis for Valor's cap). The next year, the Contel study area's average loop cost swelled to $585.63, and as of 2002, GTE Contel received $14.52 in support per line per month, compared to Valor's 23 cents per line per month. Thus, the timing of these financial events harmed Valor because of the arbitrary timing of the application of the parent trap rule, even though GTE's actions were proper under the rules and the terms of the sales transaction.

unanticipated costs.[13] Despite CTIA and Sprint's unsubstantiated claims,[14] these costs were in fact unforeseeable. With respect to due diligence, Valor devoted the same level of resources in its due diligence activities as any reasonable acquiring carrier would have invested. Thus, Valor knew at the time of purchase that it would, for example, need to upgrade the physical plant, hire additional maintenance personnel, and connect orphaned switches to its network. What it did not know was the true *extent* of those costs. In any purchase in which a study area is to be split, perfect knowledge is never available as to the final quality of all network switches, equipment, and the adequacy of assigned personnel. A thorough examination of every mile of the physical plant during due diligence was impossible, given the geographical span of Valor's Texas exchanges. Thus, Valor could not gauge the full extent of the upgrades needed until after the sale. Similarly, it could not determine the precise manpower requirements to operate the exchanges in compliance with the Texas PUC’s service standards until it had taken over operations.

Furthermore, the events triggering Valor’s extraordinary expenditures had budgetary repercussions lasting well beyond the events themselves. These events uncovered additional problems in the network and forced Valor to accelerate recurring repairs and network improvements to the plant.[15] Furthermore, because these capital expenditures were not simple expenses, the impact of these investments in depreciation and other costs was not a one-time event. For every $1 million in unexpected capital investment incurred in the last three years,

[13] *Petition* at 8-11.

[14] *CTIA Opposition* at 14-15; *Sprint Opposition* at 3.

[15] *See* Valor Ex Parte Letter from Gregory J. Vogt, Counsel for Valor Telecommunications of Texas, L.P., to Marlene H. Dortch, Secretary of the Federal Communications Commission, in WCB/PPD Docket No. 03-16 (filed May 22, 2003).

Valor must now incur an equally unanticipated $76,330 in depreciation expenses in subsequent years. The cost of the ice storms alone were over $3 million in Texarkana.[16] These circumstances, combined with low revenues, have already forced Valor to modify its modernization plan considerably.

C. Grant of the Waiver Will Result in Significant Benefits to Valor's Customers

Contrary to AT&T's assertions,[17] removal of the cap will result in significant benefits to consumers in the form of improved service. Valor's estimate of approximately $850,000 in monthly support upon the grant of the waiver was based on preliminary 2002 (not 2001) loop cost data. Valor's (recently finalized) 2002 average loop cost was $369.30 per line. Therefore, utilizing AT&T's assumptions,[18] waiver of the parent trap rule will provide Valor with $3.77 of support per line per month, or a net increase of $3.55 per loop per month.

D. Valor Cannot Obtain Additional Funding from Other Sources

Finally, contrary to the commenters' unsupported assertions, no other funding sources are available to meet Valor's needs:

- As explained above, the safety valve mechanism will not provide any support to Valor due to Valor's high costs in its index year.
- Valor cannot increase basic service rates (as Western Wireless suggests),[19] because it operates under a price cap regime in Texas and was required by the Texas PUC to adopt GTE's rates at the time of purchase.[20] In any case, Valor's average residential rate of $11.86 per month is already comparable to or higher than those of other Texas LECs (although Valor's rates, even at those levels, do not approximate costs because

[16] *Id.*

[17] *AT&T Opposition* at 3.

[18] *See AT&T Opposition* at 3 n. 10.

[19] *Western Wireless Opposition* at 8.

[20] On July 1, 2002, Valor changed its regulatory classification in Texas. This change in classification allowed Valor to change some of its non-basic service prices.

Valor purchased some of GTE's highest-cost exchanges, but adopted GTE's geographically averaged rates).

- Because there is no parent trap rule in Texas, Valor already receives the full amount of support commensurate with its costs from the state universal service fund.

- CTIA's and AT&T's assertions that Valor's 5.2 and 6.7 interstate rates of return show a healthy profit completely ignore the fact that Valor has required three consecutive years of low-end adjustments as a result of these low returns. Furthermore, those rates of return are irrelevant to showing the availability of additional funds to Valor, since high-cost loop supports *intrastate,* not *interstate* rates.[21]

- CTIA argues that Valor's representations to the Texas PUC at the time of purchase indicate that Valor does not need additional funding. Valor's representations about investor resources and loan commitments to the Texas PUC, however, related to the financial package available to close the original Valor transactions in July and September 2000. They do not represent additional, untapped resources available to Valor. The TPUC's order was issued in early 2000, before Valor operated, and the debt and equity markets have changed dramatically since that time to the detriment of telecommunications carriers. Also, as minutes and lines and revenues have declined since Valor acquired the exchanges, Valor, like every provider in the telecommunications industry, has scaled back on capital expenditures. Finally, the projections made by Valor were based on the inflated costs of 1999/2000, where labor and equipment were scarce due to extreme demand for construction of telecommunications plant.

In sum, given Valor's special circumstances, removal of the 54.305 cap is the best way for the Commission to ensure that Valor's rural customers can continue to receive affordable and reasonably comparable services. Grant of the waiver will simply serve to place Valor in a position comparable to other rural carriers dealing with the challenges of providing quality services to high-cost exchanges.

II. GRANT OF THE WAIVER IS THE MOST APPROPRIATE RELIEF UNDER COMMISSION RULES AND PRECEDENT

In the Petition, Valor showed that waiver of Section 54.305 was consistent with prior Commission decisions removing universal service caps on individual companies after a period of

[21] *CTIA Opposition* at 7; *AT&T Opposition* at 8.

three years, once the purpose of the caps had been served.[22] The purpose of Section 54.305 – to prevent inflation of transactional valuation prices in anticipation of the receipt of additional universal service support – has been fully served in Valor's case. Western Wireless's assertion that Valor's investors had an expectation that the FCC would waive Section 54.305 at some future point is completely speculative and unsupported by any evidence.[23] As explained in Valor's Petition, Valor's purchase price was a market-based price that, at most, reflected GTE's 1998 levels of universal service support rather than any anticipated increase in support subsequent to the transfer.[24] Indeed, the Texas Public Utilities Commission specifically held that Valor's purchase price reflected "a reasonable value to be paid for the assets being acquired."[25] Furthermore, Western Wireless provides no support for its assertion that three years is not long enough to affect investor expectations.[26]

CTIA claims that the *Cap Removal Orders* cannot be read to apply to the present petition, because those orders involved a predecessor rule to Section 54.305.[27] However, the policy objectives underlying both the individual company caps and Section 54.305 are the same. Both were designed to prevent excessive growth of the universal service fund that theoretically could occur if a low-cost carrier sold high-cost exchanges to an entity that would qualify for increased high cost support. Both were also designed to prevent a selling company from profiting from

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[22] *Petition* at 3-7.

[23] *Western Wireless Opposition* at 5.

[24] *Petition* at 6.

[25] *Application of Valor Telecommunications of Texas, L.P. for Approval of Sale, Transfer, or Merger, Issuance of a Certificate of Convenience and Necessity, Designation as an Eligible Telecommunications Carrier,* Final Order, Docket No. 21834, at 23 (TPUC 2000).

[26] *Western Wireless Opposition* at 5.

[27] *CTIA Opposition* at 11.

such sales. The Commission sought to control such potential problems by initially requiring carriers to estimate the annual high-cost loop support required in their study area waiver petitions, then later through the enactment of Section 54.305.

More importantly, the Commission recognized in both cases that the caps could have the negative effect of inhibiting carriers' incentive and ability to extend and upgrade service to rural customers, and the necessity of mitigating these effects.[28] In the *Cap Removal Orders*, the Commission decided to lift the caps once their purpose had been served. In the *RTF Order,* the Commission determined that immediate relief was necessary, and therefore adopted the safety valve mechanism. In both cases, the Commission determined that the countervailing interest in promoting service to rural customers mandated some relief from the caps to allow investments by rural carriers. Therefore, the Commission can and should apply these precedents, where, as here, the waiver is consistent with the Telecommunications Act of 1996 and will serve sound public policy principles. Strict application of the provisions of Section 54.305 to preclude Valor from receiving any additional support would be, quite simply, a case of the tail wagging the dog.

AT&T and CTIA claim the *Cap Removal Orders* cannot govern Valor's Petition because they predate the enactment of the safety valve mechanism.[29] However, the Commission did not repudiate these orders when it adopted the safety valve rules. Furthermore, the *Cap Removal Orders* are the relevant precedent here for two reasons. First, Valor did not request a waiver of Section 54.305 contemporaneously with the closing of a purchase of exchanges, as were the petitioners in *Mescalero Apache Telecom* and *Blackduck Telephone.* In Valor's case, the purpose of the Section 54.305 has been fully served because the possibility of increased support

[28] *See Petition* at 7.

[29] *AT&T Opposition* at 6; *CTIA Opposition* at 10.

did not factor into the transaction price. Second, the safety valve rules were not adopted until *after* Valor's purchase transaction was completed and it began operating, unlike the rural LECs in the *Mescalero Apache Telecom* and *Blackduck Telephone* cases that began operating their acquired exchanges after the FCC had adopted the safety valve rule. These LECs, which could have planned investments to obtain relief under the safety valve rule, nonetheless desired to avoid the reduced additional support levels provided by the safety valve through their waivers. As shown above, Valor had no opportunity to take the safety valve provisions into its "index year" investment decisions, because the rules were not adopted until halfway through that year. Thus, AT&T's assertion that "Blackduck's petition was like Valor's in every material respect,"[30] glosses over the significant differences Valor demonstrated exist between the facts presented in the *Blackduck* waiver and those presented here.

Finally, CTIA's contention that removal of Valor's cap will encourage similar waiver requests lacks merit, given the unique facts and circumstances of this petition.[31] Companies purchasing rural access lines now have full knowledge of the safety valve requirements, and can take those requirements into account when creating a business plan. At most, the universe of companies who could seek a waiver similar to that requested by Valor would be those companies that bought rural access lines in 2000 as partial study areas, and whose safety valve index year was 2001. Only a handful of companies would meet these criteria. From a business perspective, CTIA's claims that this three-year "expectation" will be reflected in the purchase price of exchanges in the future, or that buyers of high-cost exchanges will be encouraged to delay

[30] *AT&T Opposition* at 7.

[31] *CTIA Opposition* at 4.

investment until the third year, also lack merit and are unsupported.[32] No company would pay more today for a target company based on the speculative possibility of obtaining additional support at some time three years or more after the transaction. CTIA's unsupported assertion lacks business logic or financial reality.

III. ATTEMPTS TO INJECT EXTRANEOUS ISSUES INTO THIS PROCEEDING SHOULD BE REJECTED

A. Western Wireless' Challenge To Valor's Rural Self-Certification Is Meritless And Should Not Delay The Grant Of This Petition

Western Wireless and CTIA contend that before the Commission acts on this waiver, it must rule on Western Wireless' challenge to Valor's self-certification as a rural carrier, which was filed nearly three years ago.[33] Valor demonstrated in that proceeding that, contrary to Western Wireless and CTIA's argument, Valor qualified as a rural telephone company under the plain language of Section 3(37)(D) because it did not have more than 15% of its access lines in communities of more than 50,000 on the date of the enactment of the Telecommunications Act. Valor also showed that Western Wireless's "anti-competitive effects" test has no basis in the law.[34] As shown in the Petition, Valor's Texas service area is overwhelmingly rural.[35] Valor has been operating as a rural carrier for three years, and has been receiving universal service funding under the rural mechanism. Western Wireless's challenge is as meritless now as it was three years ago, and the pendency of its petition should not result in delay in the grant of Valor's waiver in this proceeding.

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[32] *CTIA Opposition* at 18.

[33] *Western Wireless Opposition* at 9; *CTIA Opposition* at 5.

[34] *See* Reply Comments of Valor Telecommunications Southwest, CC Docket No. 96-45, at 7 (filed Oct. 3, 2000).

[35] *Petition* at 10.

B. CTIA's Arguments Regarding Wireless ETC Support Have No Place in This Proceeding

CTIA complains that continued demands for increased high-cost funds by rural LECs such as Valor will undermine the stability of the high-cost fund and continue a pattern of disadvantaging wireless ETCs vis-à-vis rural LECs.[36] The Commission is considering these issues in a separate proceeding, and CTIA's attempt to inject them here should be rejected.[37] In any case, it is the rapid growth of competitive ETC funding that is threatening the viability of the universal service program, not the current waiver petition. USAC projections show that within the span of one year, high-cost support received by competitive ETCs grew 348 percent, from approximately $14 million to $62.7 million.[38]

CTIA also claims that the one-percent guideline should not apply to waivers of Section 54.305 and that it no longer remains viable, given the growth in the size of the universal service fund. However, the Commission expressly applied this guideline in granting Mescalero Apache Telecom's request for waiver just over two years ago.[39] Thus, application of the one-percent standard is proper, and grant of Valor's waiver will not adversely affect the universal service fund.

C. AT&T's Incomplete Reading of Section 254 Principles Should Not Govern This Waiver

[36] *CTIA Opposition* at 3.

[37] *See Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process,* Public Notice, FCC 03-J-1 (rel. Feb.7, 2003).

[38] OPASTCO Reply Comments, CC Docket No. 96-45, at 3 (filed June 3, 2003).

[39] *CTIA Opposition* at 19-20; *Mescalero Apache Telecom, Inc., Waiver of Section 54.305 of the Commission's Rules,* 16 FCC Rcd 1312 at ¶ 15 (2001).

AT&T asserts, without any support, that the Commission cannot grant this waiver unless Valor demonstrates that its waiver is necessary to ensure that rates for its customers are affordable and reasonably comparable to the rates offered in urban areas. AT&T further claims that Valor must also "demonstrate that its waiver would not violate the Act's prohibition on burdening federal universal service support mechanisms with support that should be provided by intrastate mechanisms."[40] AT&T provides no citation for this novel test, and it appears nowhere in the FCC's precedent. While AT&T is correct that one goal of Section 254 is to ensure affordable *rates*, it ignores the equally important objective of providing access to "quality services" that are "reasonably comparable" to those in urban areas. Because AT&T's argument incorrectly states the test and ignores equally relevant objectives of Section 254, its attempt to subject Valor's petition to this narrow, unprecedented standard must be rejected.

[40] *AT&T Opposition* at 2.

CONCLUSION

For the above reasons, the Commission should grant Valor's request for waiver of Section 54.305. Grant of the waiver will serve the public interest by providing Valor with sufficient universal service support to maintain quality local service and to modernize its network in its rural service areas. Valor reiterates its request that the Commission issue its ruling on this waiver prior to September 30, 2003.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Chin Yoo, hereby certify that on June 16, 2003, I caused a copy of the foregoing Reply to Oppositions to Petition for Waiver of Section 54.305 to be served via hand delivery or U.S. mail to the following:

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