Before the
Federal Communications Commission
Washington, D.C.

In the Matter of	)	
	)	
Federal-State Joint Board	)	CC Docket No. 96-45
on Universal Service	)	

Reply Comments
Of
<u>The Plains Rural Independent Companies</u>

I. Introduction

The Plains Rural Independent Companies (the "Plains Companies")[1] hereby submit reply comments in the above captioned proceeding. The Plains Companies appreciate the opportunity to reply to comments filed in response to the Federal-State Joint Board on Universal Service ("Joint Board") Public Notice[2] seeking comment on issues referred to it by the Federal Communications Commission (the "Commission"). The issues that the Commission referred to the Joint Board relate to the

[1] Companies submitting these collective comments include: Arcadia Telephone Cooperative, Arlington Telephone Company, Ayrshire Farmers Mutual Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Citizens Mutual Telephone Cooperative, Clarks Telecommunications Co., Consolidated Telco, Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Dumont Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., Interstate Communications, Interstate Telecommunications Cooperative, Inc., K&M Telephone Company, Inc., Kennebec Telephone Company, McCook Telephone Company, Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Northwest Telephone Cooperative Association, Ogden Telephone Company, Palmer Mutual Telephone Company, Rock County Telephone Company, Schaller Telephone Company, South Slope Cooperative Telephone Company, Stanton Telephone Co., Inc. Three River Telco, Universal Communications of Allison, Valley Telecommunications Cooperative, Inc., Van Horne Cooperative Telephone Company, and WTC Communications.

[2] *See* Public Notice, *Federal State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, FCC 04J-2 (rel. Aug. 16, 2004).

high-cost universal service support mechanisms for rural carriers and the appropriate rural mechanism to succeed the five-year plan adopted in the Rural Task Force Order.[3]

In these reply comments, the Plains Companies will first respond to mischaracterizations of the growth and distribution of rural high cost universal service support put forth by commenters representing wireless carriers. The Plains Companies will then address questions posed by the Joint Board and responses to such questions. In their comments, the Plains Companies recommended that the use of embedded costs continues to be the best option to most efficiently and effectively achieve the goals set forth in the Telecommunications Act of 1996 (the "Act"). The Plains Companies disagree with commenting parties that recommend the use of forward-looking economic cost ("FLEC") estimates in a high cost support mechanism for rural areas, and discuss the problems associated with the use of FLEC estimates. The Plains Companies also noted that the Commission currently has an open proceeding examining changes in intercarrier compensation,[4] and that an intercarrier compensation proposal recently submitted to the Commission by the Intercarrier Compensation Forum ("ICF") recommends that a large proportion of revenues that rural carriers receive from access charges and other intercarrier compensation mechanisms should instead be recovered through universal service support.[5] The Plains Companies believe that given the inextricable link between universal service and intercarrier compensation, it is premature to consider changes to the

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[3] *See Notice* at para. 1.

[4] *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (*"ICC NPRM"*) (rel. Apr. 27, 2001).

[5] *See* Letter from Richard R. Cameron, Counsel for the Intercarrier Compensation Forum, to Marlene H. Dortch, FCC, Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92 (dated Oct. 5, 2004) Intercarrier Compensation and Universal Service Reform Plan at pp. 31, 52-58, 69, and 73-74.

universal service support mechanism for rural carriers at this time, and note that several commenters also recommended that the Commission should not change the rural universal service support mechanism prior to addressing intercarrier compensation issues. Finally, the Plains Companies address the proper interpretation of the term "portability" in the context of the rural universal service support mechanism.

II. Rural High Cost Universal Service Support Funds Are Being Appropriately Targeted To Carriers Serving High Cost Areas, And Increases In Support Paid To Incumbent Local Exchange Carriers ("ILECs") Are Due To Commission Actions Shifting Cost Recovery.

Some commenting parties representing wireless carriers and associations suggest that the universal service support system is "at risk"[6] and that the amount of support paid to ILECs poses a "threat"[7] to the sustainability of the high cost support fund. The Plains Companies believe that in order to determine whether changes need to be made to the rural high cost universal service support mechanism, a proper understanding of the current support mechanism, both in terms of its growth and its distribution of support by geographic area, is necessary. An examination of such information indicates that the statements made by wireless carriers and associations mischaracterize the growth and distribution of high cost universal service support. As such, the statements of these commenters regarding the current high cost universal service support mechanism should be ignored, as they do not accurately characterize the current state of the mechanism and any need to change the mechanism.

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[6] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of CTIA-The Wireless Association[TM] (*"CTIA Comments"*) (filed Oct. 15, 2004) at p. ii.

[7] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Dobson Cellular Systems, Inc. on Certain of the Commission's Rules Relating to High-Cost Universal Service Support (*"Dobson Comments"*) (filed Oct. 15, 2004) at p. 3.

CTIA states that "[r]ural incumbent LECs, which serve only 12% of the nation's wireline access lines and only 6% of wireline and wireless connections combined, received three quarters of high-cost universal service support in 2003."[8] CTIA makes this statement in what appears to be an indictment of the current system. Yet, from a logical viewpoint, the above statement should not be viewed as troubling and indicative of a need for change. In fact, such a statement can easily be viewed as an indication that the current system is likely meeting its intended purpose, that is, to target support to areas of the country where the cost of providing service is high. One of the primary factors contributing to high costs to provide telecommunications services is low density. Therefore, it is perfectly reasonable that only 12 percent of the nation's wireline access lines would receive three-quarters of the high-cost universal service support, as only a small proportion of the nation's total universal service subscribers live in high cost areas, yet a majority of the funds would need to be distributed to the areas with the highest costs. For example, the Nebraska Public Service Commission recently indicated its belief that the Nebraska universal service support mechanism is valid because "greater than 98 percent (98.0%) of Program support is allocated to support areas with less than seven (7) households per square mile."[9] The support areas in Nebraska with household density of less than seven households per square mile account for 12.7 percent of Nebraska's total households, which is consistent with the federal high-cost support distribution.[10]

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[8] *CTIA Comments* a p. ii.

[9] *See the Nebraska Public Service Commission, on its Own Motion, Seeking to Establish a Long-term Universal Service Funding Mechanism*, Application No. NUSF-26, Findings and Conclusions (entered Nov. 3, 2004) at para. 56.

[10] See Excel spreadsheet "NUSF-26.2004.07.08 Erratum to PO No 5 Distribution Model.xls" available at: http://www.psc.state.ne.us/home/NPSC/usf/orders.php.

Dobson states that ". . . the most significant threat to the long-term sustainability of the high-cost universal service fund is the bloated and ever-increasing amount of support paid to incumbent local exchange carriers ("ILECs")."[11] Dobson further indicates that "[a]ccording to USAC, the high-cost support mechanism has grown 53% from 1999 to 2003, from $1.7 billion in 1999 to $3.3 billion in 2003. Fully 92 percent of that growth, or $1.4 billion, has gone to ILECs."[12] There is a very simple explanation for this growth – the decision by the Commission to move the recovery of costs associated with the provision of interstate access to a support element named Interstate Common Line Support ("ICLS") for rate-of-return carriers, and to a support element named Interstate Access Support ("IAS") for price-cap carriers.[13] While the creation of ICLS and IAS increased the amount of universal service support paid to ILECs, it did not increase the total amount of funds received to recover the costs of providing universal service and access. The vast majority, just over $1 billion, of growth in support paid to ILECs from 1999 to 2003 is attributable to the establishment of ICLS and IAS.[14] Therefore, the increase in support paid to ILECs is due primarily to regulatory changes in cost recovery, and does not represent "bloated" support in the form of increased revenues received by ILECs.

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[11] *Dobson Comments* at p. 3.

[12] Ibid.

[13] *See* Universal Service Monitoring Report, CC Docket No. 98-202, 2004, Federal-State Joint Board on Universal Service in CC Docket No. 96-45 at pp. 3 - 7 and 3 - 8.

[14] Id. at Table 3.2.

III. FLEC Proxy Models Should Not Be Used To Estimate Costs For Universal Service As Such Models Do Not Produce Reasonable Cost Estimates And Cannot Be Modified So That They Would Produce Reasonable Estimates.

Several wireless carriers and an association representing wireless carriers suggest that the Commission should transition all ILECs to a forward-looking high cost support mechanism.[15] Based on their comments, it is apparent the wireless carriers do not recognize the inordinate time and expense that would be associated with their suggestions for developing a reliable FLEC model to estimate the cost of providing universal service. Furthermore, even after attempting to implement all the suggestions of the wireless carriers to develop a FLEC model, the model still may not accurately estimate the cost of providing universal service. Therefore, as the Plains Companies indicated in their comments, and as explained in greater detail below, the use of embedded costs remains the only appropriate method to measure costs for rural carriers for the purpose of determining universal service support.

As the RTF demonstrated in its examination of the FCC's Synthesis Model, the model produces cost estimates that vary widely from embedded costs.[16] One commenting party urging that a FLEC model be used, suggests that ". . . *modest* changes to the forward-looking high-cost support mechanism. . . ."[17] are needed, while another party states that ". . . the criticism has focused primarily on the alleged inappropriateness

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[15] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Western Wireless Comments on Reform of the Rural High-Cost Support System (*"Western Wireless Comments"*) (filed Oct. 15, 2004) at pp. 21-22, CTIA Comments at p. 18, Dobson Comments at p. 6.

[16] *See* A Review of the FCC's Non-Rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies, Rural Task Force White Paper 4, September, 2000 (*"Rural Task Force White Paper 4"*) available at: http://www.wutc.wa.gov/rtf/rtfpub.nsf/43e458610b70dda8882567d00074c6cd/7e7e6b591c8b6bf38825696800730b2b!OpenDocument at p. 10.

[17] *CTIA Comments* at p. 22 (emphasis added).

of the model inputs used."[18] These statements do not accurately portray the conclusion of the Rural Task Force regarding the Synthesis model, nor the expenditure of resources necessary to effect the changes recommended by the commenters. The Rural Task Force stated that "[w]hile *it may be technically possible* to construct a model with added precision and variables to account for the differences among Rural Carriers and between non-Rural Carriers and Rural Carriers, it is the opinion of the Task Force that the current model is not an appropriate tool for determining the forward-looking cost of Rural Carriers."[19] (emphasis added) This statement clearly indicates that the Rural Task Force was uncertain as to whether *any* FLEC model could be constructed that would accurately estimate the cost of providing universal service for rural carriers. Furthermore, with regard to the suggestion that merely changing the inputs will produce accurate results, the Rural Task Force's evaluation of the model indicated that "[w]hile some results could be improved by general input variation, in many cases, improvements would need multiple, or even individual company, inputs, significantly increasing administrative problems."[20] Therefore, commenters suggesting that merely changing the input data will solve any problems with a FLEC model are drastically underestimating the effort involved. There are several hundred user-adjustable inputs in most FLEC models. Developing multiple, or even company-specific data for many of these inputs would be more administratively burdensome than the current system. Moreover, adjustments to critical data inputs that are not user adjustable, such as customer location data, could be cost-prohibitive for rural

[18] *Western Wireless Comments* at p. 24.

[19] *Rural Task Force White Paper 4* at p. 10.

[20] Id. at Appendix E, slide 145.

areas. Customer location data is typically obtained from commercial sources that assign a geographic location based on mailing addresses. While this method produces reasonably accurate results in urban areas and within towns and cities, it is not reliable in rural areas outside communities. Producing accurate customer location data in rural areas could require measures such as taking a reading from a Global Positioning Satellite ("GPS") device for every customer in a rural area. In sparsely populated rural areas such as western Nebraska where customers can be several miles apart, the time and expense to accurately gather such data would be great.

Several of the wireless commenting parties also recommended that a forward-looking high cost support mechanism should model costs for both wireline and wireless technology, and provide support in a given area based upon the least cost technology.[21] Once again, the Plains Companies believe that the wireless carriers have ignored several aspects of modeling which would make their proposals extremely difficult, if not impossible, to implement. For example, Western Wireless, in suggesting that a FLEC model be constructed that models both the cost of providing wireline and wireless service, stated that "[o]ver one year ago, Western Wireless submitted an economic analysis that outlines steps that would be needed to develop a *workable* rural forward-looking cost model."[22] (emphasis added) The Plains Companies do not believe that Western Wireless' suggestions would produce a "workable" FLEC model, as discussed below.

[21] *See Dobson Comments* at pp. 6-7, *Western Wireless Comments* at pp. 22, 27-28.

[22] *Western Wireless Comments* at p. 24.

Western Wireless suggests that a FLEC model should be used to determine support amounts for a given support area by determining the point at which two cost curves, one for a wireless provider and one for a wireline provider, each serving varying market shares from 100 percent to 0 percent, would intersect.[23] Western Wireless asserts that the point at which the two cost curves intersect "represents the theoretical minimum cost of an exchange and the optimal funding level, *assuming the existence of two competitors*."[24] (emphasis added)

In order to develop a truly representative least cost point, comparable standards of service quality and network availability would need to be developed and adhered to in modeling costs. Currently wireless networks generally offer less network availability than wireline networks.[25] If the costs for wireless technology are modeled such that network availability is less than in today's wireline network, the costs of wireless technology are likely to appear to be less than the costs of providing wireline service. Even taking into account service quality and network availability standards would not provide directly comparable cost estimates, as wireline and wireless services provide different functionalities. For example, many wireline providers offer broadband capable service, while many wireless networks are not broadband capable, especially in rural areas.

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[23] *See* James W. Stegeman, "Proposal for a Competitive and Efficient Universal Service High Cost Funding Model/Platform" (*"Stegeman Proposal"*) attached as Attachment I to Western Wireless Comments, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed May 5, 2003) at p. 14.

[24] Ibid.

[25] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ex Parte Filing of David L. Sieradzki, Counsel for Western Wireless Corp., attachment entitled "HAI Consulting, Inc. Wireless Model, Version 4.0 Documentation Prepared for Western Wireless Corporation" at p. 1, footnote 3, which indicates that the proxy model uses assumptions for a "higher busy hour offered load and a lower blocking probability than *standard mobile service*." (emphasis added)

Another shortfall in attempting to model the least cost wireline/wireless alternative is the assumption regarding the number of customers or subscriptions to be used as the base demand for modeling purposes. Western Wireless suggests that the modeling process "use all customers."[26] Does this mean that all subscriptions to both wireline and wireless services are counted, or that each potential customer (business and residential) is counted only once? If each business and residential customer is counted only once, the number of subscriptions will be underrepresented, as many consumers subscribe to both wireline and wireless services simultaneously, and many subscribe to multiple wireline and wireless subscriptions. However, if the total number of subscriptions is used, the potential base of demand will be overstated, as the modeling of costs will be estimated for a number of subscriptions that will not be demanded for one service, wireline or wireless, alone.

Yet another serious flaw in Western Wireless's proposed methodology is that it assumes the existence of two competitors.[27] The Commission, in its most recent Commercial Mobile Radio Service ("CMRS") Competition Report, indicated that 97 percent of the total U.S. population lives in counties with access to three or more different operators offering mobile telephone service.[28] In attempting to measure competition in rural areas, the Commission gathered data for counties with population densities of 100 persons or less per square mile. In such counties, the Commission found

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[26] *See Stegeman Proposal* at p. 14.

[27] Ibid.

[28] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 04-111, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, FCC 04-216, Ninth Report (rel., Sept. 28, 2004) at para. 2.

an average of 3.7 mobile competitors.[29] Therefore, the modeling of a market with only two carriers, one wireline and one wireless, is totally unrealistic given that there are four or more carriers (three wireless and one wireline) serving most areas. Furthermore, such an effort would likely understate true network cost. This is because splitting a fixed base of customers among four or more carriers tends to increase the cost of serving each customer relative to a market in which there are only two carriers, as each carrier will have a smaller number of subscribers over which to spread fixed costs.

In summary, the Plains Companies believe that the process of attempting to develop a FLEC model that estimates the costs of providing service for rural carriers would be cost-prohibitive. Furthermore, it is doubtful that such a model would accurately estimate costs for the purpose of determining the appropriate amount of universal service support.

IV. It Is Premature For The Commission To Consider Changes To The Rural Universal Service Support Mechanism Given Pending Intercarrier Compensation Reform.

In their comments, the Plains Companies urged the Joint Board to caution the Commission against making changes to the rural universal service support mechanism until the Commission has decided what, if any, actions it will take to reform intercarrier compensation. Plans to reform intercarrier compensation have been filed with the Commission by the ICF, the Alliance for Rational Intercarrier Compensation ("ARIC"), and the Expanded Portland Group ("EPG"). The Commission is expected to ask for comment on elements of these proposals in a Notice of Proposed Rulemaking within the next few months.

[29] Id. at para. 109.

The ICF proposal calls for moving costs currently recovered through access charges and reciprocal compensation to a universal service support mechanism.[30] Proposals such as the *ICF Plan* would result in major shifts in cost recovery and make many rural companies even more dependent upon universal service support than they are today. Therefore, the Plains Companies recommended in their comments that the Commission should not act on recommendations to change the rural universal service support mechanism until such time as it can determine how such changes would interact with changes in intercarrier compensation that the Commission may consider. The Plains Companies were joined by carriers and associations representing a broad cross-section of the industry that also recommended that further action to change the current universal service support mechanism for rural companies should not proceed until intercarrier compensation issues have first been considered. These commenting parties include AT&T Corporation ("AT&T"),[31] General Communication, Inc. ("GCI"),[32] and the Organization for the Advancement and Promotion of Small Telecommunications Companies ("OPASTCO").[33] Given this support across many segments of the industry, the Commission should determine what changes, if any, it will make to intercarrier compensation prior to considering changes to the high-cost universal service support mechanism for rural companies.

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[30] *See* footnote 5.

[31] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of AT&T Corp. (filed Oct. 15, 2004) at pp. 3-4.

[32] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of General Communication, Inc. (filed Oct. 15, 2004) at pp. 3-5.

[33] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Organization for the Advancement and Promotion of Small Telecommunications Companies (filed Oct. 15, 2004) at pp. 25-26.

V. The Concept Of Portability Does Not Imply That An Equal Support Amount Must Be Paid To All Eligible Telecommunications Carriers ("ETCs").

Some commenting parties representing wireless interests suggest that the concept of portability requires that all providers of universal service must receive equal amounts of universal service support.[34] The Plains Companies disagree, and note the court decisions and Commission orders cited by these commenters only state that support must be portable, not that support must be paid in an equal amount.

Western Wireless cites the U.S. Court of Appeals for the Fifth Circuit decision in *Alenco Communications, Inc. v. FCC*, which held that "portability is not only consistent with [the statutory principle of] predictability, but also is dictated by the principles of competitive neutrality and the statutory command [of section 254(e)]."[35] CTIA cites that same decision and indicates that the court stated that the universal service "program must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal regulators, determines who shall compete for and deliver services to customers."[36] However, upon further examination of the *Alenco* decision, the Plains Companies believe that the wireless commenters are overreaching in their interpretation of the term "portable support." In *Alenco Communications, Inc. et al. V. FCC*, the petitioners claimed that portability violates the statutory principle of predictability and the statutory command of sufficient funding.[37] The court found that the

[34] *See Western Wireless Comments* at p. 9, *CTIA Comments* at pp. 16-17.

[35] *Western Wireless Comments* at p. 9.

[36] *CITA Comments* at pp. 16-17.

[37] *See Alenco Communications, Inc. et al. V. FCC*, 201 F.3d608 (5^{th} Cir. 2000).

petitioners could not show that portability violates sufficiency or predictability.[38] The court further noted that the purpose of universal service is to provide "sufficient" funding of the customer's right to adequate telephone service.[39] While the court was asked to address whether the Commission's current universal service portability rules were lawful in the case, the court was not asked to determine whether identical support amounts were required to be paid to all ETCs. In fact, because the sufficiency requirement applies to the customer's right to adequate telephone service, it would appear that the payment of different support amounts to different ETCs would not violate the sufficiency requirement, so long as the support amounts would make comparable telephone service at comparable rates available to consumers.[40]

Western Wireless also cites a Commission decision which stated that "it is difficult to see how [a non-portable funding mechanism] could be considered competitively neutral" because "a mechanism that offer non-portable support may give ILECs a substantial unfair price advantage in competing for customers."[41] In this same decision, the Commission stated that "[i]t appears doubtful that a program which limits eligibility for universal service funding to ILECs would be found competitively neutral."[42] It is clear that the Commission was only addressing the principle that all

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[38] *Alenco* at 621.

[39] Ibid.

[40] See 47 U.S.C. § 254(b)(3).

[41] *Western Wireless Comments* at p. 9.

[42] *See Western Wireless Corporation Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934,* File No. CWD 98-90, Memorandum Opinion and Order, 15 F.C.C.R. 16232 (rel. Aug. 28, 200) at para. 10.

ETCs should be *eligible* to receive funding, and was not passing judgement as to whether a different level of funding for different ETCs may be appropriate.

VI. Conclusion

The Plains Companies believe that the current high-cost universal service support mechanism based on embedded costs should be maintained. Wireless carriers have mischaracterized the current distribution and growth in high-cost universal service support funds in an attempt to indict the current mechanism.

Recommendations by the wireless carriers that the Commission should move all carriers to a FLEC model to determine universal service support amounts would be cost-prohibitive to implement. Furthermore, such an expenditure of resources cannot be guaranteed to produce reasonable estimates of the cost of providing universal service in rural areas.

The Plains Companies concur with other commenting parties representing a broad cross-section of the industry, which urge the Commission to defer any action on changing the rural universal service support mechanism until any changes in intercarrier compensation are addressed. Finally, the Plains Companies believe that ETC status gives a carrier eligibility to receive universal service support, but neither such status, nor the concept of portability, should guarantee each ETC serving a given support area an equal amount of universal service support per subscription or customer.

Date: December 14, 2004.

Respectfully submitted,

The Plains Rural Independent Companies
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Arlington Telephone Company,
Ayrshire Farmers Mutual Telephone Company,
The Blair Telephone Company,
Cambridge Telephone Company,
Citizens Mutual Telephone Cooperative,
Clarks Telecommunications Co.,
Consolidated Telco, Inc.,
Consolidated Telecom, Inc.,
Consolidated Telephone Company,
Dumont Telephone Company,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc.,
Hershey Cooperative Telephone Company, Inc.,
Interstate Communications,
Interstate Telecommunications Cooperative, Inc.,
K&M Telephone Company, Inc.,
Kennebec Telephone Company,
McCook Telephone Company,
Nebraska Central Telephone Company,
Northeast Nebraska Telephone Co.,
Northwest Telephone Cooperative Association,
Ogden Telephone Company,
Palmer Mutual Telephone Company,
Rock County Telephone Company,
Schaller Telephone Company,
South Slope Cooperative Telephone Company,
Stanton Telephone Co., Inc.,
Three River Telco,
Universal Communications of Allison,
Valley Telecommunications Cooperative, Inc.,
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