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July 19, 2006

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: CC Docket No. 96-45
Notice of *Ex Parte* Presentation**

Dear Ms. Dortch:

On July 18, 2006, Steve Goodman of Roanoke & Botetourt Telephone Company (“R&B”) and Brian Sullivan and John Kuykendall of John Staurulakis, Inc. (“JSI”) met via teleconference with Scott Deutchman, legal advisor for Commissioner Michael J. Copps to discuss three Requests for Review of an Administrator Decision which were filed by Darien Telephone Company, Inc., R&B and Logan Telephone Cooperative, Inc. in the above referenced docket.¹ In the meeting, the R&B and JSI representatives explained how a decision by the Universal Service Administrative Company (“USAC”) has significantly reduced the three companies’ Safety Net Additive Support and reasons why this decision should be reversed. The representatives also urged expedited action on the matter. A copy of the presentation is attached.²

Respectfully submitted,

/s/ John Kuykendall

John Kuykendall
Director – Regulatory Affairs

Attachment

cc: Scott Deutchman

¹ In a Public Notice, the Commission sought comment on the three requests and specified that this proceeding would be a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. See *Darien Telephone Company, Inc., Logan Telephone Cooperative, Inc., and Roanoke & Botetourt Telephone Company Request Review of the Universal Service Administrative Company’s Decisions Regarding Safety Net Additive Support*, CC Docket No. 96-45, Public Notice, DA 05-1953, rel. July 6, 2005.

² A copy of R&B’s Request for Review filed on May 2, 2005 with the Commission was also provided to FCC staff.

Darien Telephone Company, Inc., Logan Telephone Cooperative, Inc. and Roanoke & Botetourt Telephone Company Requests for Review of the Universal Service Administrative Company's Decision Regarding Safety Net Additive Support

Ex Parte Meeting

I. Introduction

- **The three companies seek reversal of a decision by the Universal Service Administrative Company (USAC) which has significantly reduced the companies' Safety Net Additive (SNA) support.**
- **SNA is an additional universal service support provided to rural carriers that have made significant investment in rural infrastructure during the period in which the support level would otherwise exceed the indexed cap on the high cost support loop fund. To be eligible for SNA, a rural carrier must realize growth in Telecommunications Plant in Service (TPIS) per loop of at least 14 percent more than the study area's TPIS per loop investment at the end of the prior period.**

II. Summary of Facts

- **The companies qualified for SNA support in more than one year. USAC advanced support based upon its interpretation of Section 36.605 of the Commission's Rules (SNA Rule) which for these companies meant that they received a higher level of SNA support for the subsequent year filing.**
- **Unknown to the companies, in a memorandum dated November 24, 2003, USAC asked the FCC's Wireline Competition Bureau for its interpretation of the SNA Rule as it applied in situations where companies qualify for SNA support in subsequent years.**
- **In a letter dated January 14, 2005, the Bureau informed USAC that SNA support should be based on the amount calculated for the first qualifying year.**
- **In letters dated March 2, 2005, USAC informed the companies that this "clarification" of the SNA rule required it to recalculate SNA for these companies on both a retroactive and prospective basis.**
- **USAC's recalculation meant that the entire amount calculated by applying the "clarification" retroactively was automatically deducted from the companies' March (and, in the case of R&B, March and April) NECA settlements and that effective immediately, the companies' SNA support on a going forward basis was significantly reduced (see schedule below).**

<u>Company</u>	<u>Retroactive Adjustment</u>	<u>Decrease in Monthly SNA</u>	<u>Amt Deducted from NECA Stlmts</u>
Darien	(\$125,074.00)	(\$5,698.00)	(\$130,772.00)
Logan	(\$133,025.00)	(\$5,321.00)	(\$138,246.00)
R&B	(\$255,050.00)	(\$10,202.00)	(\$265,252.00)

III. Reasons Why USAC's Decision Should be Reversed

- **FCC's Goals for SNA Would be Thwarted if Decision is Left to Stand**
 - Purpose of SNA is to provide appropriate incentives and predictability for rural telephone companies to invest in network infrastructure.
 - Petitioners made investments in reliance on receipt of level of SNA support calculated by USAC under its reasonable interpretation of the SNA Rule.
 - Although the companies have been receiving SNA for several years, it was not until March 2005 when the companies were made aware that a significant amount of SNA support would be taken back and future SNA support dramatically reduced.
 - The predictability that SNA support was designed to provide to rural telephone companies cannot be achieved if USAC's decision to significantly reduce the companies' level of SNA support is allowed to stand.
- **USAC's Actions are Contrary to Due Process**
 - Due Process requires that fair notice be provided to those impacted before a governmental agency can apply a rule on a retroactive basis.
 - The companies had no notice that USAC's reasonable interpretation of the SNA Rule was under question or that funds were subject to refund.
 - Even plain reading of the SNA Rule does not provide adequate notice.
- **Reversal of USAC's Decision is Necessary to Rebuild Confidence in Universal Service Administration**
 - In response to the invitation by the Commission to comment on the requests for review, no commenters opposed.
 - Commenters that supported the requests demonstrated that the Commission can and should do all to avoid sending the signal that rules can change without due process and retroactive repayment of support is possible without a rational purpose.

IV. Conclusion

As demonstrated above, strong support exists for the Commission to grant the requests for review of USAC's decision. At the very least, the Commission should instruct USAC to immediately refund the SNA support which was deducted in the NECA settlement process.