Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	GN Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
High Cost Universal Service Support	)	WC Docket No. 05-337

COMMENTS OF THE BORDER COMPANIES

July 12, 2010

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EXECUTIVE SUMMARY

The Border Companies (hereinafter the "Border Companies") appreciate the opportunity to comment on the Federal Communications Commission's ("FCC's" or "Commission's") proposals to reform federal high-cost universal service in conjunction with the National Broadband Plan ("NBP"). As detailed in these comments, the Border Companies are rural incumbent local exchange carriers ("LECs") who provide universal service in their geographic study areas.[1]

The Border Companies applaud the Commission's goal of universal access to broadband in rural areas and will demonstrate that with the assistance of high cost universal service support and rate-of-return regulation, the Border Companies have achieved monumental success in providing an array of both telecommunications and advanced broadband services to their customers who include numerous community anchor institutions including federal, state and local agencies in securing the U.S.-Mexico border. In total, the Border Companies serve an area that comprises approximately 50% of the total border miles on the U.S.-Mexico border.

The Border Companies believe that the proposals in the NOI/NPRM to "cap and cut" current high-cost support would jeopardize the continued deployment of broadband along the U.S. border and unnecessarily place at risk critical services provided to law enforcement in support of national safety. Any disturbance to such vital services would be disastrous, and leave exposed a large portion of the U.S.- Mexico border without

[1] The Border Companies include: Big Bend Telephone Company, Valley Telephone Cooperative, Inc., Dell Telephone Cooperative, Alenco Communications, Inc., Border to Border Communications, Inc., Southwest Texas Telephone Company, Riviera Telephone Company, Valley Telephone Cooperative, Inc. dba Valley TeleCom Group, Tohono O'odham Utility Authority and Table Top Telephone Company, Inc.

dependable telecommunications or broadband services. The logical result would be a degradation of the ability of law enforcement agencies to communicate efficiently and share vital information related to public safety and homeland security.

The Border Companies also believe the NBP, in its current proposed state, will also negatively impact rural Americans living in these border areas. The imposition of a cap on high-cost support and dissolution of rate-of-return regulation will ultimately result in increased subscriber rates and will impede rural LECs ability to invest further in the core network that supports not only rural LEC operations but serves as a critical link of other carriers' ability to provision both telecommunications and broadband services.

The Companies urge the Commission to promote its goal of providing universal access to broadband in rural areas by enabling existing and proven universal support mechanisms and rate-of-return regulation to remain intact. The Border Companies implore the Commission to enact any modifications to existing universal support mechanisms in a thoughtful and reasoned approach, considering the proven success that has resulted from rate-of-return regulation. The Border Companies remain committed to fulfilling consumer demand for broadband as well as supporting the very critical role of numerous agencies whose job is to ensure the safety of all Americans through border protection.

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Big Bend Telephone Company ("Big Bend"), Valley Telephone Cooperative, Inc. ("VTCI"), Dell Telephone Cooperative ("Dell"), Alenco Communications, Inc. ("Alenco"), Border to Border Communications, Inc. ("Border to Border"), Southwest Texas Telephone Company ("STTC"), Riviera Telephone Company ("Riviera"), Valley Telephone Cooperative, Inc. dba Valley TeleCom Group ("VTG"), Tohono O'odham Utility Authority ("TOUA") and Table Top Telephone Company, Inc. ("Table Top") (collectively the "Border Companies") hereby respond to the invitation of the Federal Communications Commission ("FCC" or "Commission") to comment on proposals to reform the high-cost universal service program set forth in the Notice of Proposed Rulemaking ("NPRM") contained within the Commission's NOI/NPRM.[2] These proposals are part of the National Broadband Plan ("NBP") which has as its ultimate long-range goal "replac[ing] all the legacy High-Cost programs with a new program that

[2] *Connect America Fund; A National Broadband Plan for Our Future; High-Cost Universal Service Support*; WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 10-58 (rel. Apr. 21, 2010) ("NOI/NPRM").

preserves the connectivity that Americans have today and advances broadband in the 21st century."[3]

These comments demonstrate that under the existing universal service ("USF") high-cost support program, the Commission's goal of universal access to broadband in rural areas is currently being achieved by rate-of-return regulated incumbent local exchange carriers ("LECs"). Consequently, proposals in the NOI/NPRM to "cap and cut" current high-cost support would in fact be extremely detrimental to the continued deployment of broadband, especially to the extremely critical U.S. border areas where the Border Companies serve. This is contrary to the NBP's goal of ensuring that all Americans, including those in rural areas, have access to broadband services. Accordingly, consistent with the public interest, the Border Companies urge the FCC to reject these proposals and ensure that the current high-cost program remains intact while the Commission undertakes its long range goal of replacing legacy programs with the Connect America Fund ("CAF").

I. The Border Companies Provide Telecom and Broadband Service to Vital U.S.-Mexico Border Security Agencies

In terms of national security, strengthening the security of the U.S.-Mexico border to confront drug, cash, human and weapon smuggling has been and continues to be one of our nation's top priorities. According to the Department of Homeland Security ("DHS") Secretary Janet Napolitano, the number of Border Patrol agents on this border has risen to over 20,000, and since the establishment of the Southwest Border Initiative over a year ago, DHS has doubled the number of agents assigned to Border Enforcement Security Task Forces, tripled the number of Immigration and Customs Enforcement

[3] *Id.* at para. 10.

intelligence analysts and quadrupled deployments of Border Liaison Officers.[4] DHS has also increased the amount of "proven, effective technology" deployed at the border including mobile X-Ray units, a license plate reader recognition system utilizing fixed and mobile cameras and low energy mobile imaging systems.[5] In addition to these federal resources, state and local enforcement agencies also have invested a tremendous amount of manpower and financial resources to assist in securing this border.

The Border Companies play a strategic role in assisting these federal, state and local agencies in securing the U.S.-Mexico border. In total, the Border Companies serve 984 miles of the 1,954 miles that comprise the entire U.S.-Mexico border - approximately 50% of the total border miles.[6] Of note, Big Bend's service area includes 485 miles of the Texas-Mexico border which is more border miles than the border miles for the entire state of Arizona.[7] All of the Border Companies provide critical services including high capacity circuits, high speed broadband and voice services to federal, state and local border security and emergency institutions in the most remote areas of the border.[8]

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[4] Testimony by Secretary Janet Napolitano, before the United States Senate Committee on the Judiciary, on Oversight of the Department of Homeland Security, April 27, 2010. Additionally, President Obama recently announced that up to 1,200 National Guard troops will be sent to the Southwest Border for a period of a year to support law enforcement.

[5] *Id.*

[6] See Attachment 1showing the mileage along the U.S.-Mexico border that each Border Company serves. Although two of the companies, STTC and Riviera, do not serve any miles that touch the border, these companies serve very close to the border and provide service to critical federal, state and local agencies that serve the border.

[7] The state of Texas has a total of 1,255 border miles of which Big Bend serves 485 of those miles. The state of Arizona has a total of 378 border miles.

[8] *See* Attachment 2 containing in a list of the federal, state and local border security and emergency institutions that the Border Companies serve and the services that are provided to these institutions.

II. The Border Companies Rely on Current High-Cost USF to Provide Their Services

The NOI/NPRM recognizes, albeit scantly, that the current high-cost program promotes the build-out and maintenance of broadband facilities. In a footnote, the Commission acknowledges that "high-cost support for voice services indirectly supports the deployment of broadband capable networks." This finding is consistent with the conclusion made less than two months after the FCC initiated its National Broadband Plan proceeding in a report that then Acting FCC Chairman Michael J. Copps submitted to Congress pursuant to the Farm Bill in which it was found that "[t]he high-cost program indirectly supports the provision of broadband."[9]

This is indeed the case for the Border Companies which not only provide state-of-the-art telecom and broadband services to the border areas but also to the rural communities and remote areas within their expansive service territories through the assistance of the current USF high-cost program. As shown in Attachment 1, each of the Border Companies serve areas which are very rural with no Border Company serving more than 1.5 access lines per square mile and most serving less than 1 access line per mile.[10] Also as shown in Attachment 1, all of the companies have a fiber based network and most of the companies have deployed fiber in 100 percent of their core networks.

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[9] NOI/NPRM at n.119 (emphasis supplied). The Commission then cites the 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 , CC Docket Nos. 96-45, 00-256 Fourteenth Report and Order and Twenty-Second Order on Reconsideration, Report and Order, 16 FCC Rcd 11244, 11322, para. 200 (2001) ("The public switched telephone network is not a single-use network. Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services. . . . Thus, although the high cost loop support mechanism does not support the provision of advanced services, our policies do not impede the deployment of modern plant capable of providing access to advanced services").

[10] Border to Border has the lowest access line per square mile serving 88 access lines over an 800 square mile service area.

All of the Border Companies rely heavily on high-cost USF to make these upgrades and maintain their core networks and, indirectly, their broadband services. As shown in Attachment 1, each of the companies received a significant percentage of their total revenues for 2009 in the form of high-cost USF. [11]

III. NOI/NPRM's Proposals to "Cap and Cut" the Existing USF High-Cost Program Would Negatively Impact Cash Flows and Future Investments

While the Border Companies support the concept of transitioning USF high-cost to more directly support the companies' broadband services, the proposals set forth in the NOI/NPRM do not provide for such a path. Instead, they propose to eliminate high-cost support for current recipients – that both directly supports telecom <u>and</u> indirectly supports broadband services - without any assurances that the recipients will have access to support once the funds are transitioned to the CAF. Accordingly, the Border Companies urge the FCC to reject these proposals and ensure that the current high-cost program is maintained while it develops and implements the mechanisms for transiting the funds to more directly support broadband.

Although the NOI/NPRM may recognize that the current high-cost program indirectly supports broadband and that the public switch telephone network that is being supported provides access to voice and data, it is apparent that this fact has been ignored in the formulation of the proposals set forth in the NOI/NPRM. For if this reality was considered, the proposals would not seek to "eliminate" the indirect funding for current recipients and transfer the funds to a new mechanism to which the recipients may or may

[11] For three of the companies, Dell, Alenco and Border to Border, over 70 percent of their revenues are derived from USF while for four others, Big Bend, VTCI, Riviera and Table Top, over 45 percent of their revenues are derived from USF.

not have access. Instead, the Commission would consider less drastic modifications to the current program to allow the funds to more directly support broadband for those recipients as well as others that require support. The lack of recognition that the current high-cost program indirectly supports broadband is further evidenced by recent statements made by FCC Chairman Julius Genachowski when he stated:

> We run something at the FCC called a Universal Service Fund. It's an $8 billion-a-year fund that's actually done a good job over the last decades promoting universal telephone service. This fund and the people who run it wake up every day and put money into <u>yesterday's telephone network</u>. So, one of the recommendations of the plan is we obviously need to <u>transform this fund so that it's smartly, efficiently supporting broadband communications, not telephone service</u>.[12]

As demonstrated herein, the networks built by the Border Companies through the use of the USF high-cost program are not limited to only telephone service or dial tone. Instead these networks have been designed to meet the goals of affordable comparable communications services for ALL consumers, including ALL types of communications services necessary for commerce and national security. This is not "yesterday's telephone network" – this is THE CORE NETWORK.

The proposals in the NOI/NPRM, if implemented as proposed, could effectively make the voice and broadband networks of the Border Companies "go dark" or cease to exist which could leave about half of the U.S.- Mexico border without telecommunications or broadband services of any sort. This is due to the fact that cable networks that serve in some of the communities within the Border Companies' service areas do not have the reliability and reach of telephone company networks, do not provide fiber and other telecommunications facilities required by Border Patrol and law enforcement agencies, do not offer the same "always on" 911 and enhanced 911 services

[12] "Limits of Power", June 14 2010 WSJ.

and are not a viable substitute. Wireless companies are also not a viable substitute. Most of the wireless companies depend on the wireline rural telecommunications network for backhaul from the limited number of towers built in rural areas, without which they would not function, and do not have redundancy throughout their networks. Even the radio networks utilized by law enforcement depend on the rural telecommunications network for communications consolidation.

As demonstrated in Attachment 1, each of the Border Companies relies heavily on high-cost USF to maintain and upgrade these core telecom and broadband networks. Accordingly, any potential loss of high-cost USF, as envisioned by capping high-cost support at 2010 levels and converting the companies' interstate common line support ("ICLS") to a frozen amount per line means revenues must come from other sources to maintain positive cash flows. These other sources include intercarrier compensation ("ICC"), state USF where applicable, and subscriber revenues. As the Commission is fully aware, revenues from ICC are declining and state USF funds are already being fully utilized.[13] Consequently, because the companies rely so heavily on federal USF, any reduction of high-cost USF requires raising rates charged to subscribers and would require companies to significantly cut services and operating expenses in order to try to reach positive cash flow projections.

These drastic actions, however, would still not be enough to ensure that the companies are able to continue to provide quality telecom and broadband services. Any rate increases could only be modest. Rates currently charged are already priced competitively, and are comparable to those in urban areas. Further, any increase in rates

[13] For example, the state of Texas has a state universal service fund. In these lean times, it would be highly unlikely that the Texas state legislature would expand an already sizable state USF fund.

would negatively impact the federal, state and local law enforcement agencies in the border areas that subscribe to the companies' services. As to any expenses that would be cut, the most likely would be in staff reductions which would reduce network reliability for critical border locations and law enforcement organizations, further burden the remaining staff at these small businesses and lead to increased unemployment in the communities where they serve.

Even if the companies are able to maintain a positive cash flow, the companies would have no choice but to curtail all planned investment as there would not be sufficient funds to move forward with those plans. Any companies with outstanding loans and associated loan covenants would be hard pressed to have any funds available for expansion The Border Companies would not be able to obtain loans based upon financial statements reflecting negative or break-even cash flows and would have to retain any cash reserves they currently have in case they need to draw from those reserves for emergencies. Already, lenders have indicated their reluctance to extend new loans to rural LECs due to the proposals in the NOI/NPRM "because it is unclear whether these carriers will have sufficient future cash flows to service the debt."[14] For example, Big Bend has already replaced its switches with a "Next Generation Softswitch" and plans to increase its broadband speeds from an average of one to one and a half Mbps to over four Mbps in the near future.[15] Big Bend is also investigating deploying a new digital wireless communications system which has been developed for networks such as Big

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[14] See OPASTCO Ex Parte Notice from Stuart Polikoff, Vice President of Regulatory Policy and Business Development, OPASTCO, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 05-337, GN Docket No. 09-47, 09-51, 09-137 (May. 12, 2010).

[15] Although Big Bend's network is capable of providing the higher speeds, it is prevented from doing so due to limitations associated with middle mile components which are provided by other carriers. Big Bend is in the process of making arrangements with these carriers to increase middle mile capacity and thus increase the speeds that it can provide to its subscribers.

Bend that serve public safety and federal government agencies.[16] These plans must now be placed on hold due to the uncertainty surrounding the existing high-cost program.

This would also have an impact on law enforcement and other critical services that depend upon the core networks of the Border Companies and "partner" with them to fulfill critical needs of law enforcement. For example, Table Top was informed by Boeing Co. and L-3, contractors on constructing the "virtual fence" (also known as the "SBInet project") that they were not able to proceed with construction until Table Top had obtained funding from RUS to build fiber that they would need for the project.[17] Obtaining RUS funding to assist in fulfilling federally funded projects such as the virtual fence, however, has now been placed in jeopardy due to the uncertainties created by the NOI/NPRM regarding the level of USF high-cost support that rate-of-return companies such as Table Top would be able to receive in the future.

Accordingly, if the Commission enacts the proposals as set forth in the NOI/NPRM, the Border Companies will make no new investment and without adequate support for operating and maintaining the network, the quality of the network will quickly deteriorate. In light of comments being made in Washington D.C. concerning resources for Homeland Security to protect our networks, ports, infrastructure and communities from natural disasters, threats and acts of terrorism, it would be fiscally irresponsible to remove support from existing networks, effectively shutting them down, and then recreating the same network over again with new tax dollars.

[16] Big Bend is investigating using an integrated digital voice and data system that is also used by the Texas Wide Area Radio Network which is specifically designed for mission critical applications.
[17] Table Top was informed that the contractors on the virtual fence were required to use local exchange companies that were RUS borrowers to avoid duplicative federal funding.

IV. Mandatory Transition Away From Rate-of-Return Regulation is Contrary to the Public Interest

All of the Border Companies are rate-of-return regulated incumbent rural telephone companies. The current "state of the art" telecom and broadband networks in rural areas have been built primarily through rate-of-return regulation of the rural telephone companies over many years and not through companies under price cap regulation. This form of regulation provides many benefits including a certain level of stability and protection for consumers by enabling governing bodies to establish criteria in some areas of pricing and to ensure certain levels of service quality. Requiring these carriers to transition away from rate-of-return regulation to price cap would eliminate the many benefits that rate-of-return regulation brings and thus be contrary to the public interest.

A. Benefits Derived from Provider of Last Resort Obligations

One of the major benefits that accompany rate-of-return regulation is the "carrier of last resort" obligations that are imposed by state regulatory authorities upon rate-of-return regulated companies. Because rate-of-return incumbent LECs have an obligation, in accordance with state regulatory authority, to serve as the carrier of last resort (an obligation that extends far beyond the criteria established under eligible telecommunications carrier status), the expense associated with incumbent LEC-provided service to all customers within a specific geographic area is logically higher than that of their competitors.

Competitors can enter a market and pick-and choose to serve only those high-return customers who generate the most revenue, without concern for customers who require or demand only basic local service as their "connection" to the world. Rate of return-regulated incumbent LECs do not enjoy such a luxury. In many cases, the high cost of providing service to rural customers makes it economically inefficient for more than one carrier to provide service. As long as the Border Companies continue to provide the critical infrastructure needed to provision service to customers located throughout their serving territories, rate of return regulation is a prudent mechanism to ensure ubiquity of service.

Current rate-of-return regulation and universal service support enable the Border Companies to serve as carriers of last resort in critical areas along most of the U.S.-Mexico border and ensure that rural Americans within their service areas have access to affordable telecommunications and broadband services. As carriers of last resort, the Border Companies serve customers throughout their entire exchange areas. The cost and responsibility associated with this undertaking is sizeable and has resulted in countless success stories of customers' ability to obtain advanced telecommunications and broadband services in remote, rural areas and would not be possible in an environment not subject to such regulation.

The obligation to provide service to the entire service area also means that the Border Companies provide service to areas within their service areas that are economically depressed. These areas typically are not served by competitors who can pick-and-choose customers and service areas based on the pure profitability of the proposition. This then ensures that consumers in these areas are able to obtain affordable telecom services, including vital access to 911 and enhanced 911, through the federal USF Link-Up and Lifeline programs that are offered by the Border Companies to those qualifying as low income subscribers in these areas.

B. Benefits Derived from Efficient Operations and Quality of Service

The assertion in the National Broadband Plan and the NOI/NPRM that rate-of-return regulated companies are inherently inefficient is completely inaccurate.[18] Rate-of-return regulated companies are only given the opportunity to attain a specified rate of return. There is no guarantee that a carrier will accomplish its financial goals or achieve its permissible rate of return without prudent management and efficient business decisions that are stringently reviewed by state and federal regulatory bodies as well as rate-of-return regulated companies' lenders, members, owners, and boards of directors. Most rate-of-return carriers continue to rely upon funding from lending institutions in order to build and maintain their network infrastructure. As with any loan arrangement, rate-of-return regulated companies must prove their financial viability and efficiency of operations to assure the lending institution that the loan will be repaid in accord with the loan covenant.

Additionally, rate-of-return regulated companies are essential members of their communities with keen desire and interest in operating efficiently for the betterment of their customers who are also their friends, neighbors, and in some cases, shareholders or cooperative members. The Border Companies have an excellent reputation for providing high quality, reliable, state-of-the-art telecom and broadband services with staff that can respond 24-7 to whatever communications needs that may arise. As a result, federal, state and local law enforcement and public safety entities as well as small businesses and

[18] USAC audit findings have even confirmed that initial findings of supposed inefficiencies of rate-of-return companies were not true. According to USAC 2009 Annual Report, USAC found that data on the first round of the audit program "supported USAC's initial report that the early estimates of 'improper' payments were too high" and reported that the final improper payment rate dropped to 2.7% from the early estimate of 16.6%.

rural consumers rely heavily on the networks of the Border Companies and in many cases, have no other alternatives. For example, some of the Border Companies serve near coastal areas which are prone to hurricanes and are able to continue to provide service during and after the devastation due to underground facilities.[19] Also, Riviera has an arrangement with FEMA and DHS in which the company has placed these agencies on a priority list in the event of any outages that may occur. Other Border Companies have similar arrangements with FEMA, DHS and other federal, state and local government agencies. In many ways, these agencies and the contractors that support them are seen as "partners" with the Border Companies in carrying out their critical functions.

If the high-cost USF that these companies receive is significantly diminished as envisioned by the NOI/NPRM proposes, these companies would have to severely diminish the quality of the services that they provide and cease investing in their networks – possibly to the point that they cease providing services at all. The federal, state and local agencies, small businesses, rural consumers and others that rely on the reliable high-quality telecom and broadband services that the Border Companies provide would then be forced to use lower quality and less reliable networks or would have no network at all if it is in an area where no competitor has chosen to serve.

C. Benefits from Investment in Broadband Deployment

As is demonstrated in Attachments 1 and 2, each of the Border Companies provide broadband and most have deployed broadband facilities so that 100 percent of the consumers in their areas have access to these facilities. As demonstrated herein, this has been due to the fact that the current USF high-cost program indirectly funds

[19] After hurricanes, it is typical that in these Border Company areas, many wireless towers and coaxial cables are not operable so the only communications services in those areas are those provided by the Border Companies.

broadband. The role that rate-of-return regulation has played in advancing this deployment is recognized in the NBP in which it states that companies under rate-of-return regulation are able to "recoup their actual costs of extending broadband to unserved areas, including the costs of deploying fiber and, for some companies, soft switches."[20] The NBP contrasts this with companies that are under price cap regulation and admits that the amounts of USF received by these carriers "do not provide an incentive for the costly upgrades that may be required to deliver broadband to these customers."[21]

Given the excellent track record of deployment of rate-of-return companies in deploying broadband, it would be entirely contrary to the public interest and arbitrary and capricious for the FCC to require rate-of-return companies to transition away from rate-of-return regulation to price cap. This is especially so since there are alternative ways for FCC to address the lack of broadband deployment in price cap areas while maintaining rate-of-return regulation for those companies that have been under this regime. The Border Companies also assert that it would also be contrary to the public interest to make it virtually impossible for rate-of-return companies to obtain funds from the CAF by using a reverse auction or procurement process in order for a company to obtain funds and in restricting funds to only areas where 4 Mbps or less is available, creating a greater digital divide between urban and rural areas.

[20] NBP at n. 37.
[21] NBP at Chap 8.3. The Commission notes, "funding levels for the larger carriers are based on a forward looking cost model that was designed to estimate the cost of providing circuit-switched voice service; it was never intended to address the investment necessary to extend broadband to unserved areas."

V. Continued Existing Support is Essential to Ensure Secure Wireline Networks for Border Security

The NBP asserts that wireless broadband could be a substitute for wireline broadband if enough spectrum is provided. For example, in Chapter 5, the NBP cites the Department of Justice as stating, "'Given the potential of wireless services to reach underserved areas and to provide an alternative to wireline broadband providers in other areas, the Commission's primary tool for promoting broadband competition should be freeing up spectrum.'"[22] In the critical areas where the Border Companies serve, however, this would not hold true. Rather than being a substitute for the wireline network, the wireless carriers rely on the Border Companies' wireline networks for backhaul. Currently, the towers used by wireless carriers in the long vast stretches along the U.S.-Mexico border are few, the service is spotty and wireless devices are vulnerable to hacking, weather, and terrain. The carriers also have little or no redundancy in their networks and security on wireless networks is a major concern. Accordingly, even if additional spectrum is made available, the wireless networks in the border areas will not be able to provide the federal, state and local law enforcement and other agencies with a broadband service that could serve as a substitute for the reliable wireline broadband networks of the Border Companies.[23]

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[22] NBP, Chap. 5.1 citing Letter from Christine A. Varney, Asst. Atty. General, U.S. Dept. of Justice, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51 (Jan. 4, 2010) (DOJ Jan. 4, 2010 *Ex Parte) at 21.*

[23] Big Bend has had discussions with Border Patrol personnel regarding whether wireless could serve as a substitute and was informed that it would not be able to provide the robust and reliable services that Big Bend's wireline broadband service provides.

Further, the mobile towers in Mexico routinely overpower those on the U.S. side of the border causing domestic phones to “roam” and incur international charges. The fact that these towers can wreak havoc on civilians is well documented and our law enforcement community is no different. The mobile phone environment along the border is entirely too fragile to be a reliable device for our nation’s Homeland Security. While we all hear an outcry for wireless technologies along our borders, the security and reliability of these technologies is far from adequate without robust terrestrial based networks.

This realization is precisely why the investment the Border Companies have made in our terrestrial solutions strengthens our nation’s Homeland Security and further reinforces the need for fiber-based communications. The Border Companies’ networks, while allowing for voice applications, provide border law enforcement a launch point for secure, broadband surveillance applications which would not be available were it not for the current recovery mechanisms. The Border Companies’ communication installations provide for strategic, regionalized wireless applications which can be concentrated in a particular area over a secure data link which non-terrestrial based applications can not accommodate.

The current leading edge IP network acts as a bridge for targeted applications such as remote sensors, cameras and encrypted two way radios that carry information back to law enforcement personnel over a secure, land based infrastructure that could not have been established without rate-of-return support. A predominately wireless infrastructure, although convenient, can not compare to the integrity of a fiber-based solution protecting law enforcement efforts and those of our nation's Homeland Security. The rural investment in this integrity would surely cease to continue without ongoing rate-of-return regulation.

VI. Conclusion

At a time when the NBP is being touted as the vehicle through which a higher percentage of all Americans will gain access to the digital information super highway, it is disturbing that the FCC fails to recognize how much progress has already been made, particularly with respect to rural areas served by rate-of-return ILECs, towards deploying the infrastructure necessary to provide consumers in unserved and underserved parts of our country with access to high speed broadband services. As has been demonstrated herein, through the existing high-cost program under rate-of-return regulation, the Border Companies have deployed high quality, state-of-the-art telecom and broadband facilities in very rural service areas along the U.S.-Mexico border. Federal, state and local law enforcement agencies, small businesses, rural consumers and many others depend upon these reliable networks for critical border security, public safety and other vital services.

To meet its goals for providing broadband to the unserved areas served by price cap carriers, the FCC need only to consider some of the many alternatives which already have been offered and the many more which will be proffered as part of this comment cycle. Some of these alternatives include moving first to broaden the base of contributors to USF to include all broadband providers, making minor modifications to existing USF mechanisms to allow for more direct funding of broadband and adopting a separate approach to address the unserved areas in areas served by price cap carriers while allowing companies under rate-of-return regulation to remain. This approach would truly accomplish the NBP's goal of ensuring that all Americans, including those in rural areas, have access to broadband services by allowing the continued deployment of high quality telecom and high-speed broadband in rural America where rate-of-return companies serve while also bringing broadband facilities for the first time to unserved areas served by price cap carriers.

Absent such a measured approach, the proposals in the NOI/NPRM to "cap and cut" the existing USF high-cost support for these rate-of-return companies would greatly diminish the services provided to these areas, stifle investment in the network and could effectively make these voice and broadband networks of the Border Companies cease to exist. This result would be catastrophic, leaving about half of the U.S.- Mexico border without reliable telecom or broadband services of any sort and exposing many critical state and federal law enforcement agencies. The Border Companies, as the carrier of last resort, are typically the only provider and in other areas, cable or wireless companies have many inadequacies which prevent them from being a viable alternative. The Border Companies urge the Commission to be mindful of the very prevalent safety and security concerns that exist along the border and ensure a rational approach to any modification of the current high-cost universal service program, to ensure that the Border Companies can continue to provide reliable voice and broadband services to their customers, community anchor institutions and specifically the law enforcement agencies who rely upon such services to secure the homeland.

Respectfully submitted,

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Charles W. Wiese, General Manager
Tohono O'odham Utility Authority
P.O. Box 837
Sells, AZ 85634

By: *<u>/s/ Dave Osborne</u>*
Dave Osborne, General Manager
Valley Telephone Cooperative, Inc.
480 South Sixth Street
Raymondville, TX 78580

By: *<u>/s/ Steve Metts</u>*
Steve Metts, CEO and General Manager
Valley Telephone Cooperative, Inc.
d/b/a Valley TeleCom Group
752 E. Maley
Willcox, AZ 85643

ATTACHMENT 1

BORDER INFORMATION

Attachment 1

	Big Bend Telephone Company, Inc.	Dell Telephone	Valley Telephone Coop, Inc. TX	Alenco	Border to Border	Southwest Texas Telephone	Riviera Telephone	Texas Rural LEC Total	Texas Total	Valley TeleCom Group-NM	New Mexico Total	Tohono O'odham	Valley TeleCom Group-AZ	Table Top Telephone	Arizona Rural and Tribal	Arizona Total	California Total	Total Rural LEC	United States Total
Percent of Federal USF Revenues to Total Regulated Revenues	58.7%	74.8%	46.4%	74.0%	70.0%	31.8%	56.4%	NA	NA	NA	180.0%	20.0%		48.8%					
Miles of Border with Mexico	485	200	4	60	16	-	-	765	1,255	130	180	62	20	7	89	378	141	984	1,954
Percentage of Total	25%	10%	0%	3%	1%	0%	0%	39%	64%	7%	9%	3%	1%	0.4%	3%	19%	7%	50%	
Total Access Lines - Regulated	5,000	1,225	6,120	1,965	88	4,132	1,097	19,627	NA		-	4,180	5,660	3,995	9,840	NA	NA	29,467	NA
Square Miles Served	18,000	10,500	7,850	4,835	800	3,600	1,000	46,585	NA	3,500	3,500	4,479	6,500	2,976	13,955	NA	NA	64,040	NA
% of Access Lines Per Sq Miles Served	0.278	0.117	0.780	0.406	0.110	1.148	1.097	0.421	NA	-	-	0.933	0.871	1.342	0.705	NA	NA	0.460	NA
Percentage of lines Broadband Avail (if possible)	100%	75%	100%	92%	100%	100%	100%	NA	NA		NA	NA	89%	100%	NA	NA	NA	NA	NA
Current Broadband speed Max Avail (where technically available)	1.5 Mbps	768 kbps	30 Mbps	768k	1.5 Mbps	6.0 mbps	2.0Mbps	NA	NA		NA	NA	3.0 Mbps adv.	3.0 Mbps	NA	NA	NA	NA	NA
Fiber Based Network	Yes	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA	Yes	NA	Yes	Yes	Yes	Yes	NA	NA	NA	NA
Miles of Fiber Network in Place	1,700	800	1,400	100	80	355	100	4,535	NA	170	170 plus	135	205 plus	134	NA	NA	NA		NA
Border Counties Served	Brewster Crockett Jeff Davis Pecos Presidio Reeves Terrell Val Verde	Culberson Eddy, NM El Paso Hudspeth Jeff Davis Otero, NM Reeves	Atascosa Brooks Cameron Dimmit Duvall Frio Hidalgo Jim Hogg Jim Wells Kenedy LaSalle Live Oak McMullen Starr Webb Willacy Zapata Zavalla	Duval Maverick Uvalde Webb	Webb Zapata	Bandera Edwards Kinney Medina Real Uvalde Val Verde	Brooks Kenedy Kleberg					Pima		Pima					

ATTACHMENT 2

BORDER SECURITY INSTITUTIONS

Attachment 2

Border Security Institutions Served:

		Big Bend Telephone Company, Inc.	Dell Telephone	Valley Telephone Coop, Inc. TX	Alenco	Border to Border	Southwest Texas Telephone	Riviera Telephone	Valley TeleCom Group-NM	Tohono O'odham	Valley TeleCom Group-AZ	Table Top Telephone
1	U. S. Port of Entry	Presidio and Boquillas (under construction)			Columbia-Salidarity International Bridge (Largest Inland Port in U. S.)				Columbus and have fiber within 3 miles of PPE at Santa Teresa currently served by ATT		Antelope Wells and have fiber within 3 miles of PPE at Douglas currently served by Quest	Lukeville
2	U. S. Border Patrol Check Point Stations	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes		Yes
3	U. S. Border Patrol Office Locations	Yes		Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes
4	U. S. Customs	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes
5	U. S. Department of Justice	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6	U. S. Air Force - Radar Balloon Installation Site	Yes		Yes					Yes			
7	U. S. Weather Service	Yes										Yes
8	U. S. Navy - Gunnery and Bombing Range			Yes								
9	U. S. Coast Guard - Port Mansfield, TX			Yes								

Attachment 2

10	U. S. Department of Immigration, Customs and Enforcement	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
11	Federal Aviation Administration	Yes					Yes	Yes	Yes		Yes	Yes
12	Long Range Radar Station						Yes					
13	Federal Motor Carrier Safety Administration	Yes			Yes							
14	Department of the Interior/Homeland Security	Big Bend National Park	Guadalupe National Park							Yes		Yes
15	Unmanned Aerial Vehicles (Drones)	Yes										
16	Virtual Fence	In Planning Stages							In Planning Stages		In Planning Stages	In Planning Stages
17	Texas Department of Public Safety	Yes	Yes	Yes	Yes			Yes				
18	Texas Department of Parks and Wildlife	Yes	Yes	Yes	Yes		Yes	Yes				
19	Texas Department of Transportation	Yes	Yes	Yes	Yes		Yes	Yes				
20	Sheriff's Department offices and Radio Repeater Sites	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
21	911 Facilities	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Cellular Facilities:

Cell Towers in Territory	30	12	56	20+	6	11	10	5	NA	20	NA

Attachment 2

Backhaul Provided by RLEC	30	8	56	20+	6	8	10	5	NA	20	NA

Services Available to Border Security and Emergency Institutions:

High Capacity Circuits	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
High Speed Broadband	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Ethernet Transport	Yes	Yes	Yes				Yes	Yes		Yes	Yes
Voice Services	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

ATTACHMENT 3

MILEAGE SUMMARY

Attachment 3

	Texas	New Mexico	Arizona	California	Total
Miles of Border with Mexico	1,255	180	378	141	1,954
Percentage of Total	64%	9%	19%	7%	100%
Rural and Tribal ILEC Miles of Border with Mexico	765	130	82	-	977
Percentage of state	61%	72%	22%	0%	50%
Rural Percentage of Total	39%	7%	4%	0%	50%