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

In the Matter of	)
	)
Advanced Telecommunications Provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010	) CG Docket No. 10-213))

TO: Consumer & Governmental Affairs Bureau and
Wireless Telecommunications Bureau

COMMENTS OF
THE BLOOSTON RURAL CARRIERS

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its small rural local exchange carrier ("RLEC") clients and their affiliates listed in Attachment A (the "Blooston Rural Carriers"), submits the following comments in response to the Commission's Public Notice (*Consumer & Governmental Affairs Bureau and Wireless Telecommunications Bureau Seek Comments on Advanced Communication Provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010*), DA 10-2029, released October 21, 2010, in the captioned proceeding.

The Blooston Rural Carriers support the provision to people with disabilities of access to broadband technologies and services. They hope that implementation of the National Broadband Plan, as well as the Twenty-First Century Communications and Video Accessibility Act of 2010 ("2010 Accessibility Act"), will enable people with disabilities to share more fully in the economic and social benefits of broadband.

Unfortunately, the Blooston Rural Carriers are all very small and highly localized entities that lack the size, resources or purchasing power to influence either: (a) the design and structure of the international, national and regional advanced communications services available for them

to offer customers in their rural service areas; or (b) the design, features and pricing of the equipment (including network equipment, third party applications, peripheral devices, hardware, software and customer premises equipment) available for the provision and use of such advanced communication services. They request that RLECs, RLEC affiliates, and other similarly situated small entities be exempted, pursuant to Section 716(h)(2) of the Communications Act ("the Act"), from the requirements of new Section 716 of the Act, plus the related enforcement and recordkeeping requirements of new Section 717 of the Act. In the alternative, they request that the Commission establish streamlined procedures and simplified criteria that make appropriate waivers pursuant to Section 716(h)(1) of the Act reasonably available to qualifying entities in a timely, predictable and economically reasonable manner.

RLECs and RLEC Affiliates Should Be Exempted Under Section 716(h)(2) Because They Have No Ability to Influence The Development, Availability or Pricing of Advanced Communications Services Or the Equipment Used to Provide or Access Such Services

The Blooston Rural Carriers, through their Internet Service Provider ("ISP") divisions or affiliates, offer electronic mail ("email") and similar electronic messaging services. Some are also providing, or exploring the provision of, interconnected Voice over Internet Protocol ("VoIP") services via their local exchange operations and/or their long distance toll resale divisions or affiliates. Others are providing text messaging, email and similar electronic messaging services through their cellular resale or other wireless divisions or affiliates. Finally, a few are exploring or preparing to offer interoperable video conferencing services in areas where they have sufficient bandwidth available.

The Commission has recognized that smaller carriers are disadvantaged in equipment markets because vendors give priority to larger carriers who place larger orders. *See, e.g., Hearing Aid Compatibility Reconsideration Order,* 20 FCC Rcd 11,221 (2005) at 11,233 ¶ 22,

citing *Non-Nationwide Carriers Order*, 17 FCC Rcd 14,841 (2002) at 14,846-47 ¶ 20. This is particularly true of RLECs and RLEC affiliates, which constitute a very small portion of the current advanced communications services industry (which includes incumbent local exchange carriers ("ILECs"), competitive local exchange carriers ("CLECs"), cable television companies, wireless carriers and Internet service providers). Whereas a dozen or so RLECs serve more than 50,000 loops, the substantial majority of RLECs serve less than 12,000 loops and are therefore overshadowed by the purchasing power of ILECs such as AT&T Inc. (60.8 million loops at end of 2007), Verizon Communications Inc. (40.7 million loops at end of 2007) and Qwest Communications, Inc. (12.0 million loops at end of 2007),[1] as well as the larger cable operators such as Comcast (10.5 million digital cable subscribers as of June 2006) and Time-Warner (5.8 million digital cable subscribers as of June 2006),[2] and the larger wireless carriers such as AT&T (77.0 million subscribers at end of 2008), Verizon Wireless (72.0 million subscribers at end of 2008) and Sprint Nextel (48.3 million subscribers at end of 2008).[3] Put another way, even the largest RLECs serve less than one-tenth of one percent (0.102%) of the ILEC market (total 122,596,593 ILEC loops, as of December 31, 2008[4]), whereas the majority of individual RLECs serve less than nine-thousandths of one percent (0.009%) thereof. When CLEC, cable television, wireless and ISP "lines" are also included in the advanced communications services market, the relative purchasing power of RLECs and their affiliates in equipment markets is even further diminished.

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[1] Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service* (September 2010), at Table 7.3.

[2] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, MB Docket No. 06-189, released January 16, 2009, at p. 15.

[3] *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, WT Docket No. 09-66, FCC 10-81, released May 20, 2010, at p. 9.

[4] Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service* (September 2010), at Table 7.2.

Because of their small size, RLECs and RLEC affiliates can expect to have no significant influence upon the design and structure of individual advanced communications services. Both currently and during the foreseeable future, they will have no option but to adopt the services, features and protocols of the international, national and regional services provided by the larger carriers with which they must interconnect and communicate. Likewise, because of their small size and limited purchasing power, individual RLECs and RLEC affiliates can expect to have no significant influence upon the design, features and pricing of the network equipment, third party applications, peripheral devices, hardware, software and/or customer premises equipment used in the provision of advanced communications services. Rather, both currently and during the foreseeable future, they will have no choice but to purchase the equipment offered by manufacturers and vendors in the overall international, national or regional equipment marketplace at the prices determined by such markets. Put another way, whereas AT&T, Verizon, Comcast and similar large carriers appear to have enough purchasing and market power to influence the design, features and pricing of advanced communications services and equipment, RLECs and RLEC affiliates do not have such influence and will not obtain it within the foreseeable future.

The Blooston Rural Carriers, like other RLEC entities, also lack the staff resources to design and develop their own advanced communication services and/or equipment. The Commission and the Small Business Administration have set "1,500 or fewer employees" as the "small business" size standard for wired telecommunications carriers, for cellular and other wireless telecommunications carriers, and for telecommunications resellers.[5] The Blooston Rural Carriers and other RLEC entities fall well within the lowest portion of this range. Very few RLEC entities have 100 or more employees, most have between 25 and 50 employees, and a

[5] http://www.fcc.gov/ocbo/sizestandards.html (viewed 11/15/2010).

significant number have less than 10 employees. These small RLEC staffs must deal with all aspects of operating a telecommunications and information service business, including customer service, plant maintenance, customer installations and repairs, and accounting and bookkeeping matters. They simply do not have the time or resources to engage in the research and development of applications, peripheral devices, hardware, software, customer premises equipment and/or network equipment that can be used to provide advanced communication services and/or access by disabled individuals to such services.

At the present time, RLECs and their affiliates are suffering from financial difficulties that are aggravating the problems and disadvantages caused by their small sizes, small markets, small staffs and lack of significant purchasing power and economies of scale. RLECs have always faced a harsh economic environment in which they have served rugged and sparsely populated rural areas which larger carriers declined to serve and which have per-line construction and operating costs that significantly exceed the national average. The current recession has hit many rural residents and small businesses hard, and has induced some to discontinue or reduce the services they purchase from RLECs and RLEC affiliates. In addition, "phantom traffic" and the increasing use of wireless and Voice over Internet Protocol ("VoIP") long distance options that are offered at lower prices because they pay little or no access charges have continued to exacerbate the long-term trend of decreasing toll minutes and dwindling access revenues for RLECs. Finally, the Commission's initial National Broadband Plan proposals have created much uncertainty among RLECs regarding the availability and amounts of their future universal service support and intercarrier compensation revenue streams.

In sum, the Blooston Rural Carriers and other RLEC organizations wholly lack the size and purchasing power to influence the design, availability, features or pricing of advanced

communications services and/or equipment. They likewise lack the staff or financial resources to develop their own advanced communications services and/or equipment, including features that would improve the accessibility or usability of such services or equipment for persons with disabilities.

The Blooston Rural Carriers, their affiliates and other RLEC entities will have absolutely no control over the availability, features or pricing of the services and equipment that may ultimately become available in international, national or regional broadband equipment markets for use by disabled individuals. Therefore, they cannot comply with the accessibility and usability requirements of Section 716(b) and/or the compatibility requirement of Section 716(c) unless and until manufacturers or other vendors develop and make available the requisite third party applications, peripheral devices, hardware, software, customer premises equipment and/or network equipment.

It appears that accessibility and usability for disabled persons will be most effectively, efficiently and economically provided via customer premises equipment ("CPE"). Such equipment can be customized and targeted to address the particular needs of people with various types and degrees of disabilities. Given that the diverse disabled community is not likely to be well-served by "one size fits all" approaches, CPE solutions would appear to be far more preferable and practicable than the expensive, hit-and-miss incorporation of arrays of accessibility features and options into routers, digital subscriber line access multiplexers ("DSLAMs") and other broadband network switching or monitoring devices.

If the Blooston Rural Carriers and other RLEC entities were subjected to Section 716 of the Act, they would very likely be able to show that compliance with its requirements was "not achievable" until equipment (or wholesale services) incorporating the subject accessibility and

usability features becomes readily available at reasonable prices in the general telecommunications marketplace. However, the burden of proving "not achievable" pursuant to Section 716(g) appears to be an expensive, time consuming and uncertain process. Likewise, compliance with the performance objectives and guidelines of Section 716(e), as well as the complaint procedures and recordkeeping and certification procedures of Section 717(a), will impose significant additional time and expense burdens upon RLEC organizations. These obligations and expenses constitute an unfunded mandate that will make it unnecessarily more difficult for RLEC organizations to upgrade their networks and deploy advanced communications services to more and more of their customers during a time of worldwide financial upheaval as well as uncertainty regarding the future of critical RLEC revenue streams.

Rather than subjecting RLECs and RLEC affiliates to regulatory burdens that will not hasten the availability of accessible and usable advanced communications services and equipment for either their disabled customers or their non-disabled customers, the Blooston Rural Carriers request that the Commission employ Section 716(h)(2) to exempt RLECs, RLEC affiliates and similar small entities from the requirements of Sections 716 and 717, unless and until such time as customer premises equipment (or appropriate third party applications, peripheral devices, software or hardware) is available to consumers at nominal cost and is accessible by individuals with disabilities.

A general Section 716(h)(2) exemption for small entities will provide certainty and conserve the resources of both small entities and their customers with disabilities. It will allow the Commission and interested parties to focus their attention and enforcement efforts upon the manufacturers and large service providers who have the resources, capabilities and purchasing power to influence the design and development of the equipment and service features that will

permit more and more persons with disabilities to access and use advanced communications service at an early date. At such future time as the advanced communications services and equipment necessary for the requisite accessibility and use by disabled people become generally available in the marketplace at reasonable and affordable prices, the Commission can re-assess the continuing need for such small entity exemption.

In the Alternative, the Section 716(h)(1) Waiver Process
Should Be Specific, Streamlined and Predictable

In the alternative, the Commission is requested to establish a specific, streamlined and predictable process under Section 716(h)(1) for granting waivers of Sections 716 and 717.

The problem with many Commission waiver proceedings is that they require substantial and expensive presentations of evidence and argument in order to try to satisfy uncertain case-by-case standards of proof, and then often remain pending for six-to-twelve months or more. From the time that entities discover the need for a waiver until the Commission takes final action, they are frequently subjected to substantial uncertainties and disruptions regarding their investment and regulatory compliance plans.

The Blooston Rural Carriers recommend that the Commission minimize or avoid these problems with respect to Section 716(h)(1) waivers by establishing a streamlined process for small entities. For example, streamlined waivers could be made available to entities that satisfy the "small business" size standard of "1,500 or fewer employees" established by Commission and the Small Business Administration for wired, cellular and other wireless telecommunications carriers and for telecommunications resellers; and/or for entities that serve less than one percent (1.0%) of the customers taking advanced communications services as of the most recent Commission survey. Once an entity qualifies for the streamlined waiver process, it should only have to present evidence that its subject service or equipment was designed for purposes other

than using advanced communications services. The Commission should also declare that any service offered, as well as any equipment deployed, before the effective date of its Section 716 and 717 regulations will be deemed to be designed primarily for purposes other than using advanced communications services. Finally, all Section 716(h)(1) waiver petitions qualifying for streamlined processing should be deemed granted on the thirtieth day after they appear on a Commission public notice, unless an interested party or the Commission itself can demonstrate that equipment is available at nominal cost that can provide access to the subject network or advanced communications service by people with the applicable disabilities.

Conclusion

The proposed Section 716(h)(2) exemption for small entities (as well as the alternative streamlined Section 716(h)(1) waiver process for small entities) will enable RLECs, RLEC affiliates, and other qualifying small entities to continue to deploy advanced communications services during difficult and uncertain economic times without significantly impairing or delaying the ability of disabled individuals to access and use such services. The affected small entities do not have the size, resources or purchasing power to influence the design, structure, features or pricing of advanced communications services or the equipment needed to provide them. The Commission will serve both the general public and disabled individuals best by focusing its initial regulatory and enforcement efforts upon the manufacturers and large service providers that are in the best position to develop, test and deploy large quantities of the various types of CPE and/or other equipment that will meet the needs of individuals with disabilities. Small entities should remain exempt (or protected by waivers) until such time as various types of CPE or other equipment are determined to meet the needs of the targeted classes of disabled

individuals and are manufactured in sufficient quantities to become available to disabled customers at reasonable and affordable prices.

Respectfully submitted,
THE BLOOSTON RURAL CARRIERS

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ATTACHMENT A

Blooston Rural Carriers

All West Communications Inc
Choctaw Telephone Company
Clear Lake Telephone Company
Dakota Central Telecommunications Cooperative
Delcambre Telephone Co Inc
Delhi Telephone Company
Electra Telephone Company
Harrisonville Telephone Company
Haxtun Telephone Company
Lincoln County Telephone Sys Inc
Manti Telephone Company
MoKan Dial Inc
Northeast Florida Telephone Company Inc
Ponderosa Telephone Co
Pymatuning Independent Telephone Company
Smithville Telephone Company Inc
South Central Utah Telephone Association Inc
South Slope Telephone Co Inc
Spring Grove Communications
Tatum Telephone Company
Townes Telecommunications Inc
TelAtlantic Communications, Inc
Venture Communications Cooperative
Walnut Hill Telephone Company Inc