

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
Big Bend Telephone Company, Inc.)	
Petition for Waiver of the Commission’s)	
Rules Implementing Reform of)	
Universal Service Support and)	
Intercarrier Compensation for)	
Rate-of-Return Carriers)	

**COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

This submission by USTelecom¹ is in response to the Federal Communications Commission’s (Commission) request for comments on the petition for waiver (Petition) filed by Big Bend Telephone Company, Inc. (BBTC).² BBTC seeks a waiver of three sections of the Commission’s newly adopted universal service and intercarrier compensation reform rules. The first request applies to Sec.54.302 of the Commission’s rules which establishes a total limit on universal service support of \$250 per month per line, beginning July 1, 2012.³ BBTC also seeks a waiver of the updated and extended limits on recovery of corporate operations expenses applied to High Cost Loop Support

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

²Big Bend Telephone Company, Inc. Petition for Waiver of Section 54.302 of the Commission’s Rules, WC Docket No. 10-90 and WT Docket No. 10-208 (filed February 6, 2012); *see also Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, (rel. Nov. 18, 2011) (*USF/ICC Transformation Order and FNPRM*).

³ *Id.*

(HCLS) and Interstate Common Line Support (ICLS).⁴ Third, BBTC seeks a waiver of the “planned application of a regression analysis to limit reimbursable capital and operating expenses for HCLS.”⁵ USTelecom supports the provision of sufficient support to provide service to high-cost areas, and due to the particularly challenging nature of the BBTC service area, encourages the Commission to promptly confirm the financial information in the redacted portion of the petition and then grant the requested and necessary relief.

I. The BBTC Petition Establishes Sufficient Grounds for Waiver of Section 54.302

Subject to confirmation of the information provided in the redacted portions of the BBTC petition, more than sufficient good cause is demonstrated to justify the Commission waiving section 54.302 of its rules.⁶ As noted by the petition, the Commission made a waiver process available for circumstances where its new rules would reduce a carriers’ support to a point that it “would not be ‘sufficient to achieve the purposes of [section 254] of the Act.’”⁷ BBTC makes a compelling case that absent relief, it would not be financially viable for BBTC to continue to provide service.

Not only does BBTC serve a large mountainous area containing over 17 thousand square miles, including 25 percent of the U.S.-Mexico land border, its service area has poor road infrastructure, extreme weather, and requires long distances to each different parts of the network for repairs.⁸ It serves a geographic area larger than the state of

⁴ *Id.*

⁵ *Id.*

⁶ 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a regulation where the particular facts make strict compliance inconsistent with the public interest. See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

⁷ Petition at 2.

⁸ *Id.*

Massachusetts with 0.3 customers per square mile.⁹ Furthermore, BBTC has a unique national security obligation by virtue of its proximity to the border and the number of border security and law enforcement institutions that it serves. BBTC also serves numerous other anchor institutions, including schools, libraries, financial institutions, government installations and hospitals and health clinics. And the loss of BBTC service would even impact consumers in the portions of its service area served by alternative providers of terrestrial voice and broadband services since BBTC is the exclusive provider of transport services used by such providers in its service territory.

Given the incredible challenges inherent in the area it serves, BBTC has made extraordinary and creative efforts to operate in the most cost-effective manner possible, building its network using a combination of wireline, wireless and satellite technology. BBTC continues to enhance its network with a fixed wireless access solution to provide better service at lower costs. But BBTC anticipates that even these efforts will be insufficient to allow the company to operate as an ongoing concern without relief from some of the new USF rules.¹⁰ Given the extraordinary efforts BBTC has made to provide service in a cost effective manner, the \$250 per line monthly cap is too low given the enormous challenges inherent in its service area, and thus should be waived.

II. Application of the Regression Analysis Limitations to BBTC is Not Appropriate

Although the Commission has not yet fleshed out full details of its regression analysis approach, serious doubts have been expressed about the use of such an analysis

⁹ Petition at 4.

¹⁰ Petition at 3 and 4, “The anticipated reduction of universal service support is projected to cause the Company to default on its loan covenants by 2013 and cause the Company and its affiliates to be out of cash by January 2016. Under these projected universal service fund limitations, bankruptcy would be inevitable.”

to fairly achieve to accomplish the kinds of constraints sought by the Commission.¹¹ As applied to the BBTC petition, it is doubtful that regression analyses can be structured in such a way as to properly take into account networks' serving areas that, by virtue of unique and unavoidable circumstances, are significant outliers from the cost characteristics that underlie the regression analysis. In terms of the nature of BBTC's service area, the last-mile network technology it must use to serve this area, and the prevalence of institutions involved in our national security located in its service area, BBTC's situation is clearly outside the variations that the regression analysis is intended to capture. Application of the regression analysis to BBTC, which would serve to reduce its universal service high-cost funding, would be inappropriate and counter-productive to the Commission's goals of maintaining and extending availability of voice and broadband service in high-cost areas.

III. Waiver of the Updated and Extended Limits on Recovery of Corporate Operations Expenses Should be Granted

In addition to making extraordinary efforts to build an efficient network, BBTC has demonstrated its commitment to constraining its corporate operations expenses by proactively taking measures to improve its efficiency by sharing additional responsibilities among its lean staff and trimming employee benefits.¹² Given the impact of the extension of the corporate operations expense limitation on BBTC's ability to continue as an ongoing entity and its good faith efforts to hold such expenses in check,

¹¹ See Comments of USTelecom at 19 (January 18, 2012) on Sections XVII.A-K of the USF/ICC Transformation Order, and also Petition for Reconsideration and Clarification (December 29, 2011) by the National Exchange Carrier Association, Inc., Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance.

¹² Petition at 3.

the request for waiver of the extension of the corporate operations expense limitation should be granted.

IV. Conclusion

USTelecom respectfully requests that the BBTC Petition be granted. Special circumstances warranting a deviation from general rules clearly exist here and serve the public interest and the national interest. Absent relief, consumers, anchor institutions and national security institutions would be at risk of not having access to terrestrial voice and broadband services. Subject to confirmation of the financial information in the redacted portion of the petition, good cause is shown for granting the waivers. The public interest and the national interest would be well served by grant of the waivers requested.

Respectfully submitted,

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