

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

**To: The Commission**

**PETITION FOR STAY  
OF BLUE VALLEY TELE-COMMUNICATIONS, INC.**

Blue Valley Tele-Communications, Inc. (Blue Valley), by its attorneys, hereby requests that the Commission stay implementation of the Wireline Competition Bureau's (WCB's) *Regression Order*<sup>1</sup> and the benchmarking methodology and initial benchmarks contained therein, pursuant to section 1.43 of the Commission's Rules, 47 C.F.R. § 1.43. Blue Valley requests a stay of the *Regression Order* until the Commission acts on Blue Valley's Application for Review of the order, which is being filed simultaneously herewith, and all inaccuracies in the model are corrected.

**I. Applicable Stay Standard**

Based on the four part test used by the Commission to determine whether a stay is warranted, a petitioner must demonstrate that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if the stay is not granted; (3) other interested parties will not be harmed if

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<sup>1</sup> Connect America Fund, WC Docket No. 10-90, High-Cost Universal Service Support, WC Docket No. 05-337, Order, DA 12-646 (rel. Apr. 25, 2012) (*Regression Order*).

the stay is granted; and (4) the public interest favors granting a stay.<sup>2</sup> As shown herein, Blue Valley has met the four prongs of this test and, therefore, the Commission should grant this request.

## **II. Blue Valley is Likely to Prevail on Merits**

As shown in the Application for Review, the WCB's *Regression Order* and the model and inputs used in the model are fatally flawed in many respects. As a result, the *Regression Order* and the model adopted therein, is arbitrary and capricious.

Although the WCB has acknowledged that the TeleAtlas data is inaccurate for many companies and, in some cases, significantly so, the WCB refused to modify the study area boundaries before implementing the regression methodology.<sup>3</sup> Based on its review of the model and inputs used by the WCB, Blue Valley has found that not only is the TeleAtlas data inaccurate for many companies, including Blue Valley, it also is not consistent with the company geographic parameters used by other data sources in the model, such as the NECA data. In spite of these demonstrated errors, the WCB refused to modify the study area boundaries before implementing the regression methodology. The use of faulty data adds to the unpredictable

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<sup>2</sup> *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); see also *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

<sup>3</sup> Penasco Valley Telephone Cooperative, Inc. demonstrated that although the Commission showed its service area to be 2,331 square miles, its actual service area is almost twice as large at 4,651 square miles. (Comments of Penasco Valley Telephone Cooperative, Inc., WC Docket 10-90, et al., filed January 18, 2012, at 2.) Further, the National Exchange Carrier Association demonstrated that there are errors in the geographical mapping data used by the Commission in more than 90 percent of study areas and that an analysis of 357 study areas in the TeleAtlas Database showed that over 22 percent of the study area boundaries are not accurate within 20 percent. (Comments of NECA, et al, WC Docket 10-90, et al., filed January 18, 2012, at App. D, 2-7.)

nature of the mechanism in violation of the requirement in Section 254(b)(5) of the Act that support mechanisms should be sufficient and predictable.

The WCB's attempt to justify its refusal to correct the inaccurate geographic data used in the model on the basis that it is the only available data and there is Commission precedent for its use fails in this case. According to the WCB, the TeleAtlas data was used in the Commission's hybrid cost proxy model and to create maps showing certain high cost support areas and areas with competitive carriers in response to requests for the U.S. House of Representatives.<sup>4</sup> The maps provided to Congress, however, were of illustrative value and did not result in direct impacts to carriers. Further, the Commission's hybrid cost proxy model is not applied to rural rate-of return carriers, in part because of the Commission's finding that imprecision in the model would have a greater impact on such small carriers.<sup>5</sup> Accordingly, the fact that the Commission has used the TeleAtlas data in these contexts does not justify its use in this case, where it is an important variable in a model that skews the results of the model for Blue Valley and other carriers, and that will have real, and significant, financial impacts on Blue Valley and other small, rural carriers.

The WCB's provision of a streamlined, expedited waiver process for carriers affected by the benchmarks to correct errors in their study area boundaries also does not save the flawed model. The boundary data is an important variable in a model that seeks to compare similarly situated companies. There can be no confidence that the model results are accurate or that similarly situated companies have, in fact, been compared to each other, if the geographic data for all companies is not accurate. It is quite possible that if the correct data was used for all

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<sup>4</sup> *Order* at ¶25 and fn. 73.

<sup>5</sup> *In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8934, ¶291 (1997).

companies, there could be differences in the companies that exceed the 90th percentile, such that Blue Valley would not exceed the 90th percentile.

The WCB model also lacks transparency, it is not plausible, and it does not reflect reality. When considering the adoption of the hybrid cost proxy model, the Commission established a number of parameters for consideration of a model, including all underlying data should be verifiable and outputs plausible and the model must include the capability to examine and modify the critical assumptions.<sup>6</sup> Further, a model must reflect reality.<sup>7</sup> None of these criteria are met.

The model is not plausible or an accurate reflection of reality because of the use of inaccurate data and also because of the use of incorrect assumptions and formulas, which produce counter-intuitive results. For example, the model applies a negative coefficient to capital expense for areas with bedrock, although it is more expensive to install facilities in areas of bedrock. Thus, the model penalizes carriers, like Blue Valley, that bury plant in this circumstance. However, Blue Valley operates in a part of Kansas frequently in the path of tornados and ice storms that oftentimes destroy aerial cable. Under these severe conditions, facilities are buried to ensure reliability of service and to avoid excessive maintenance and replacement costs. In 2007, for example, a significant number of utility poles in Blue Valley's service territory were felled by an ice storm. Although many customers lost electric power for a number of days, Blue Valley was able to continue to provide service, including access to emergency service providers, with the use of generators. Blue Valley, of course, also was able to avoid the cost of replacing utility poles and transmission plant.

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<sup>6</sup> *In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8913, ¶250 (1997).

<sup>7</sup> *American Iron & Steel Inst. v. EPA*, 115 F. 3d 979, 1005 (D.C. Cir. 1997)

Similarly, the model applies a negative coefficient to both capital expense and operating expense as the number of road miles increases even though the cost to install facilities increases as the number of road miles increases. It also is not clear that the model accurately calculates road miles. For example, it appears that the calculation of road miles does not include the distance from the road to the premise, which can be great in rural areas. The WCB, apparently, assumes that some of these inaccurate assumptions cancel each other out. But, this is unknown because the assumptions are not clearly identified or explained and they were not tested. Thus, the model is not transparent.

The WCB's model also is unpredictable and insufficient, in violation of Section 254 of the Act. The changing nature of the model, coupled with the inaccurate data and methodologies discussed above, makes it difficult to determine with certainty the effects of the caps over time. The inability to predict the outcome of the model is compounded by the fact that outcomes are based on the actions of all carriers.

The WCB's benchmarking methodology also provides insufficient support for Blue Valley. Blue Valley estimates that even at the "phased in" level, the regression model will cause a loss in universal service support for Blue Valley of approximately \$177,000 in 2012 and \$1,080,000 in 2013. The 2012 per customer impact of the "phased in" model is \$46 per customer per year. The 2013 per customer impact of the "phased in" model is \$280 per customer per year. Blue Valley estimates that the model will cause a loss in universal service support of \$2,300,000 in 2014 and \$2,500,000 in 2015.<sup>8</sup>

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<sup>8</sup> The changing nature of the model makes it difficult to determine with certainty the effects of the caps over time. However, in an effort to assess the potential effect of the caps in future years, Blue Valley assumed the coefficients of the quantile regression model do not change.

Annual impacts at this level threaten the viability of Blue Valley. As Blue Valley is the only reliable voice and broadband carrier providing service throughout its service territory, these impacts also threaten the ability of Blue Valley's customers to continue to obtain not only broadband service, but also basic voice service. Blue Valley's ability to repay its RUS loans also is threatened.

For these reasons, Blue Valley is likely to prevail on the merits of its simultaneously filed Application for Review before this Commission.

### **III. Blue Valley will be Irreparable Harmed Absent a Stay**

Irreparable harm can be demonstrated "when monetary damages are difficult to ascertain or are inadequate"<sup>9</sup> or where economic loss is coupled with the loss of goodwill or customers.<sup>10</sup> Irreparable injury also can include loss of control of reputation, loss of trade, and loss of goodwill.<sup>11</sup> Blue Valley will suffer irreparable harm for all of these reasons.

As shown, monetary damages are difficult to ascertain in the later years of the model because of the changing nature of the model, coupled with the inaccurate data and methodologies discussed herein. The inability to predict the outcome of the model is compounded by the fact that outcomes are based on the actions of all carriers.

The known impact of the model in 2012 and 2013 threatens Blue Valley's ability to maintain its customer base and repay its loans. As shown, the per customer impact of the "phased in" regression model in 2012 is \$46 per customer per year. The per customer impact of

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<sup>9</sup> *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 551-552 (4th Cir. Va. 1994), citing *Danielson v. Local 275*, 479 F.2d 1033, 1037 (2d Cir. 1973).

<sup>10</sup> See *BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Services LLC*, 425 F.3d 964, 970 (11th Cir 2005)

<sup>11</sup> See *Ferrellas Partners, L.P. v. Barrow*, 143 Fed. App. 180, 190 (11th Cir 2005)

the "phased in" regression model in 2013 is \$280 per customer per year. This would require either a significant increase in rates charged to customers or a drastic reduction in services and maintenance of facilities. In either case, Blue Valley would experience a reduction in customers and a loss of reputation and good will.

A reduction in support of this magnitude will threaten Blue Valley's ability to repay its outstanding loans, exceeding \$32 million, to RUS. The inability of Blue Valley to repay its loans also would result in a loss of reputation and good will.

Finally, the future impact of the model, as projected by Blue Valley and shown herein, threatens the very viability of the company. Accordingly, Blue Valley has demonstrated that it will be irreparably harmed by the WCB's model.

#### **IV. Interested Parties Are Not Harmed**

No other interested parties will be injured by grant of the requested stay. The HCLS is a capped mechanism and, therefore, a stay of the benchmarks as applied to Blue Valley will not require carriers, and ultimately consumers, to make additional universal service contributions. Further, universal service support amounts for other carriers are determined by separate mechanisms and, therefore, there will be no reduction in their universal service support.

#### **V. The Public Interest Favors Grant of the Stay**

Blue Valley is a small cooperative incumbent local exchange carrier operating in rural Kansas. It serves 3853 voice subscribers in over 1086 square miles, or approximately 3.55 subscribers per square mile.<sup>12</sup> Blue Valley is the sole reliable provider of voice and broadband

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<sup>12</sup> This includes all 12 exchanges served by Blue Valley.

service in the majority of its service area. Although wireless service is available in parts of Blue Valley's service territory, wireless service is limited and coverage is sporadic for the more rural subscribers. Blue Valley also provides necessary transport services to and from the service area for wireless service facilities operating in this area. Accordingly, the continued provision of wireless service will be impacted as a result of the impacts to Blue Valley from the model.

Blue Valley provides broadband service that meets the Commission's broadband standard to 100 percent of its customers, through a fiber to the home construction program that began in 2005 and, for the most part, was completed by the end of 2010. This project was funded through loans from RUS. Blue Valley's ability to repay its loans from RUS, exceeding \$32 million, will be impacted by the projected loss of universal service support resulting from the application of the regression model.

Blue Valley is the only carrier providing reliable voice and broadband service throughout its service territory. Accordingly, as Blue Valley's ability to continue to provide high quality service is impacted by the model, customers will not be able to continue to obtain broadband and voice service in the rural part of Kansas served by Blue Valley.

For all the foregoing reasons, grant of the application is in the public interest.

## **VI. Conclusion**

As shown herein, Blue Valley has met the four prong stay standard applied by the Commission. Accordingly, Blue Valley requests a stay of the *Regression Order* until the Commission acts on Blue Valley's Application for Review of the order, which is being filed simultaneously herewith, and all inaccuracies in the model are corrected.

Respectfully submitted,

**BLUE VALLEY  
TELE-COMMUNICATIONS, INC.**

By: /s/ Mary J. Sisak

Benjamin H. Dickens, Jr.

Mary J. Sisak

Blooston, Mordkofsky, Dickens

Duffy & Prendergast, LLP

2120 L Street, NW, Suite 300

Washington, DC 20037

(202) 659-0830

Date: June 22, 2012

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

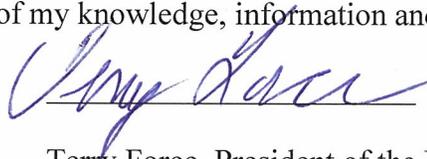
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High-Cost Universal Service Support	)	WC Docket No. 05-337

**DECLARATION OF TERRY FORCE**

1. My name is Terry Force. I currently serve as President of the Board of Directors of Blue Valley Tele-Communications, Inc. (Blue Valley). I have been President since 1998. I am submitting this Declaration on behalf of Blue Valley, in support of the information provided concerning the company and the impacts of the regression analysis formulas adopted by the Wireline Competition Bureau and the resulting caps on capital and operating expenses that may be supported through the High-Cost Loop Support component of the Federal Universal Service Fund.

2. I have reviewed the foregoing Petition for Stay of Blue Valley Tele-Communications, Inc. I declare under penalty of perjury that the facts and statements concerning Blue Valley contained in the foregoing Petition for Stay of Blue Valley Tele-Communications, Inc., are true and correct to the best of my knowledge, information and belief.

Signature:



Terry Force, President of the Board of Directors

Date:

June 22, 2012

Certificate of Service

The undersigned hereby certifies that on the 22nd day of June, 2012, a copy of the forgoing **Petition for Stay of Blue Valley Tele-Communications, Inc.** was served via U.S. Mail, postage prepaid, to the following:

Sharon E. Gillett, Chief  
Wireline Competition Bureau  
445 12th Street, SW  
Washington, DC 20554  
sharon.gillett@fcc.gov

James S. Blaszak  
For Ad Hoc Telecommunications Users Committee  
Levine, Blaszak, Block, and Boothby, LLP  
2001 L St. NW, Suite 900  
Washington, DC

Stephen L. Goodman  
Counsel for ADTRAN, Inc.  
Butzel Long Tighe Patton, PLLC  
1747 Pennsylvania Ave, NW, Suite 300  
Washington, DC 20006

Cathy Carpino  
AT&T Services, Inc.  
1120 20th Street NW, Suite 1000  
Washington, D.C. 20036

Rich Redman, General Manager  
ATC COMMUNICATIONS  
225 West North Street  
Albion, ID 83311

Patrick Sherrill, President and CEO  
Accipiter Communications Inc.  
2238 W. Lone Cactus Dr., Suite 100  
Phoenix, AZ 85027

Leonard A. Steinberg  
ALASKA COMMUNICATIONS SYSTEMS  
600 Telephone Avenue  
Anchorage, Alaska 99503

Shannon M. Heim  
Counsel for Alaska Rural Coalition  
Dorsey & Whitney LLP  
1031 West 4th Avenue, Suite 600  
Anchorage, AK 99501

Alexicon Telecommunications Consulting  
3210 E. Woodmen Rd, Suite 210  
Colorado Springs, CO 80920

Thomas Cohen  
Counsel for American Cable Association  
Kelley Drye & Warren LLP  
3050 K Street, NW, Suite 400  
Washington, DC 20007

Blue Valley Telecommunications  
1559 Pony Express Hwy  
Home, KS 66438-9762

David A. LaFuria  
Counsel for C SPIRE WIRELESS  
LUKAS, NACE, GUTIERREZ & SACHS, LLP  
8300 Greensboro Drive, Suite 1200  
McLean, Virginia 22102

Sunne Wright McPeak, President and CEO  
California Emerging Technology Fund (CETF)  
5 Third Street, Suite 320  
San Francisco, CA 94103

Michael F. Altschul, Senior VP & General Counsel  
CTIA-The Wireless Association  
1400 16<sup>th</sup> Street, NW, Suite 600  
Washington, DC 20036

Samuel L. Feder  
Counsel for Charter Communications, Inc.  
JENNER & BLOCK LLP  
1099 New York Ave., NW, Suite 900  
Washington, D.C. 20001

Ernest C. Cooper  
Counsel for Cablevision Systems Corp.  
MINTZ, LEVIN, P.C.  
701 Pennsylvania Avenue, N.W., Suite 900  
Washington, D.C. 20004

Kirby Smith, Director of Finance  
Calveras Telephone Company  
513 Main Street  
Copperopolis, CA 95228

Frank R. Lindh  
Attorney for California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Tom Shoemaker, Vice-President  
Cambridge Telephone Company  
613 Patterson  
Cambridge, NE 69022

Gerard J. Waldron  
Counsel for Carriers for Progress in Rural America  
Covington & Burling LLP  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Caressa D. Bennet  
Counsel for Central Texas Telephone Cooperative  
Bennet & Bennet, PLLC  
4350 East West Highway, Suite 201  
Bethesda, MD 20814

Jeffrey S. Lanning  
Counsel for Centurylink  
1099 New York Avenue, N.W., Suite 250  
Washington, DC 20001

Cathleen A. Massey  
Vice President Regulatory Affairs & Public Policy  
Clearwire Corporation  
1250 Eye St., NW, Suite 901  
Washington, DC 20005

Fred Goldstein, Consultant  
Coalition for Rational Universal Service and  
Intercarrier Reform  
PO Box 610251  
Newton MA 02461

David Dengel, CEO/General Manager  
Copper Valley Telephone Cooperative, Inc  
Box 337  
Valdez, AK 99686

Mike Lattin, President  
EAGLE TELEPHONE SYSTEM, INC.  
Post Office Box 178  
Richland, OR 97870

Kathleen Abernathy Chief Legal Officer  
Frontier Communications  
2300 N St. NW, Suite 710  
Washington, DC 20037

Jeffrey H. Smith, Vice-President  
GVNW Consulting, Inc.  
8050 SW Warm Springs Street, Suite 200  
Tualatin, Oregon 97062

John T. Nakahata  
Counsel for General Communications, Inc.  
WILTSHIRE & GRANNIS LLP  
1200 Eighteenth Street, N.W.  
Washington, D.C. 20036

Tom W. Davidson, Esq.  
Counsel for Gila River Telecommunications, Inc.  
Akin Gump Strauss Hauer and Feld LLP  
1333 New Hampshire Avenue, NW  
Washington, DC 20036

Robert Hunt, Vice President, Regulatory Affairs  
Guadalupe Valley Telephone Cooperative, Inc.  
36101 FM 3159  
New Braunfels, TX 78132

Carroll Onsaie, President/General Manager  
Hopi Telecommunications, Inc.  
5200 E. Courtland Boulevard E200  
Flagstaff, Arizona 86004

Genevieve Morelli  
ITTA  
1101 Vermont Ave., NW Suite 501  
Washington, D.C. 20005

James D. Atterholt, Chairman  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 E  
Indianapolis, In 46204

Vince Jesaitis  
Director, Government Relations  
Information Technology Industry Council  
1101 K Street, Nw Suite 610  
Washington, Dc 20005

Randy Wilson, General Manager  
INTERBEL TELEPHONE COOPERATIVE, INC.  
PO Box 648  
Eureka, MT 59917

James J. Kail, President/CEO  
Laurel Highland Telephone Company  
Yukon-Waltz Telephone Company  
4157 Main Street  
Stahlstown, PA 15687

Maneesh Pangasa  
3562 South 18th Avenue  
Yuma, AZ 85365-3937

Godfrey Enjady  
Mescalero Apache Telecom, Inc.  
75 Carrizo Canyon Road  
Mescalero, NM 88340

Steve Child, CEO  
Midvale Telephone Exchange  
2205 Keithley Creek Road  
Midvale, ID 83645

Chad A. Duval, Principal  
Counsel to the Moss Adams Companies  
MOSS ADAMS LLP  
601 W. Riverside Ave., Suite 1800  
Spokane, WA 99201

Charles Acquard, Executive Director  
NASUCA  
8380 Colesville Road, Suite 101  
Silver Spring, MD 20910

William C. Black, Deputy Public Advocate  
Maine Office of Public Advocate  
SHS#112  
Augusta, ME 04333

Stefanie A. Brand, Director  
Division of Rate Counsel  
P.O. Box 46005  
Newark, NJ 07101

Regina Costa  
TURN  
115 Sansome St., Suite 900  
San Francisco, CA 94104

Richard A. Askoff  
Attorney for NECA  
80 South Jefferson Road  
Whippany, NJ 07981

Donald J. Evans  
Counsel for NTCH, Inc.  
Fletcher, Heald & Hildreth, PLC  
1300 North 17th Street, 11th Floor  
Arlington, VA 22209

Rick Chessen  
National Cable & Telecommunications Association  
25 Massachusetts Avenue, NW – Suite 100  
Washington, DC 20001-1431

Darrell Gerlaugh, Chairman  
National Tribal Telecommunications Association  
519 Tennessee Avenue  
Alexandria, VA 22305  
Shana Knutson, Staff Attorney  
The Nebraska Public Service Commission  
300 The Atrium Building  
1200 N Street  
Lincoln, NE 68508

Sarah J. Morris  
Open Technology Initiative  
New America Foundation  
1899 L Street, NW, 4th Floor  
Washington, DC 20036

Danielle Frappier  
Counsel to Nexus Communications, Inc  
Davis Wright Tremaine LLP  
1919 Pennsylvania Avenue, N.W., Suite 800  
Washington, D.C. 20006-3401

Michael Sheard, General Manager  
NORTHERN TELEPHONE COOPERATIVE  
P.O. Box 190  
Sunburst, MT 59482

Michael T. N. Fitch, President and CEO  
PCIA  
901 N. Washington Street, Suite 600  
Alexandria, VA 22314

David C. Blessing, Principal  
Parrish, Blessing & Associates  
3975 University Drive, Suite 215  
Fairfax, VA 22030

Joseph K. Witmer, Esq., Assistant Counsel,  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, P A 17120

Sandra J. Paske, Secretary  
Public Service Commission of Wisconsin  
610 N Whitney Way  
PO Box 7854  
Madison, WI 53707-7854

William L. Wright  
PUBLIC UTILITIES COMMISSION OF OHIO  
180 East Broad Street, 6th Floor  
Columbus, OH 43215-3793

Steven K. Berry  
RCA  
805 Fifteenth Street, N.W., Suite 401  
Washington, DC 20005

Gregg C. Vanderheiden, Ph.D.  
Principal Investigator, RERC-IT  
Trace R&D Center  
University of Wisconsin-Madison  
1550 Engineering Dr.  
Madison, WI 53706

T.W. Patch, Chairman  
Regulatory Commission of Alaska  
701 West 8th Avenue, Suite 300  
Anchorage, AK 99501

Rural Telecommunications Group, Inc.  
Caressa D. Bennet  
Bennet & Bennet, PLLC  
4350 East West Highway, Suite 201  
Bethesda, MD 20814

Larry E. Sevier, Chief Executive Officer  
Rural Telephone Service Company, Inc.  
145 N. Main  
PO Box 158  
Lenora, KS 67645

Sacred Wind Communications  
5901-J Wyoming Blvd., NE  
Box 266  
Albuquerque, NM 87109

Jeffrey H. Blum, Senior Vice-President  
DISH NETWORK L.L.C.  
1110 Vermont Avenue NW, Suite 750  
Washington, DC 20005

Keven Lippert, Vice President  
Broadband Services Division  
VIASAT, INC.  
6155 El Camino Real  
Carlsbad, CA 92009

Dean A. Manson  
ECHOSTAR TECHNOLOGIES L.L.C.  
HUGHES NETWORK SYSTEMS, LLC  
11717 Exploration Lane  
Germantown, MD 20876

Jerry Isaac, President and Chairman  
Tanana Chiefs Conference  
Chief Peter John Tribal Building  
122 First Avenue, Suite 600  
Fairbanks, Alaska 99701-4897

Pete Holland  
Chillicothe Telephone Company  
68 East Main Street  
Chillicothe OH 45601

Paul M. Schudel  
The Nebraska Rural Independent Companies  
Woods & Aitken LLP  
301 South 13th Street, Suite 500  
Lincoln, NE 68508

Matthew A. Brill  
Time Warner Cable, Inc.  
LATHAM & WATKINS LLP  
555 Eleventh Street, NW, Suite 1000  
Washington, DC 20004

Todd D. Daubert  
Counsel for the USA Coalition  
SNR DENTON US LLP  
1301 K Street, N.W.  
East Tower, Suite 600  
Washington, DC 20005

David A. LaFuria  
Counsel For United States Cellular Corporation  
Lukas, Nace, Gutierrez & Sachs, Llp  
8300 Greensboro Drive, Suite 1200  
McLean, Virginia 22102

David Cohen  
Counsel To The United States Telecom Association  
607 14th Street, NW, Suite 400  
Washington, D.C. 20005

Christopher M. Miller  
Counsel to Verizon  
1320 North Courthouse Road, Ninth Floor  
Arlington, VA 22201-2909

George E. Young, Esq.  
Vermont Public Service Board  
112 State Street  
Montpelier VT 05620-2701

Betty Buckley  
Washington Independent Telecommunications  
Association  
2112 Black Lake Blvd. SW  
Olympia, WA 98512

Brant Wolf  
Oregon Telecommunications Association  
777 13th St. SE, Suite 120  
Salem, Oregon 97301-4038

Molly Steckel  
Idaho Telecom Alliance  
P.O. Box 1638  
Boise, Idaho, 83701-1638

Geoffrey Feiss  
Montana Telecommunications Association  
208 North Montana Avenue, Suite 105  
Helena, Montana 59601

Peter Kirchhof  
Colorado Telecommunications Association  
225 E. 16th Avenue, Suite 260  
Denver, CO 80203

Archie Macias  
Wheat State Telephone, Inc.  
106 West First Street  
P.O. Box 320  
Udall, Kansas 67146-0320

Malena F. Barzilai  
Windstream Communications, Inc.  
1101 17th St., N.W., Suite 802  
Washington, DC 20036

Stephen E. Coran  
Counsel to the Wireless Internet Service Providers  
Association  
Rini Coran, PC  
1140 19th Street, NW, Suite 600  
Washington, DC 20036

By:       /s Salvatore Taillefer, Jr.      

Salvatore Taillefer, Jr.

Blooston, Mordkofsky, Dickens, Duffy &  
Prendergast, LLP  
2120 L Street NW, Suite 300  
Washington, DC 20037