

**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		

**APPLICATION FOR REVIEW OF
BLUE VALLEY TELE-COMMUNICATIONS, INC.**

Blue Valley Tele-Communications, Inc. (Blue Valley), by its attorneys and pursuant to Section 1.115 of the Commission's rules, submits this Application for Review of the Wireline Competition Bureau's (WCB) *Regression Order*¹ adopting a quantile regression model for establishing limits or "benchmarks" for high cost loop support. In the *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, released November 18, 2011 (*USF/ICC Order*),² the Commission directed the WCB to implement a methodology for "setting the benchmark levels to estimate appropriate levels of capital expenses and operating expenses for each incumbent rate-of-return study area, using publicly available data"³ based on the framework adopted by the Commission. The Commission found that the framework will "create structural

¹ *In the Matter of Connect America Fund; High-Cost Universal Service Support*, Order, WC Dockets No. 10-90 and 05-337, DA 12-646, released April 25, 2012.

² *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Reform – Mobility Fund*; Report and Order and Further Notice of Proposed Rulemaking, WC Dockets No. 10-90, 07-135, 05-337, 03-109; CC Dockets No. 01-92, 96-45; GN Docket No. 09-51; WT Docket No. 10-208, released November 18, 2011.

³ *USF/ICC Order* at ¶210.

incentives for rate-of-return companies to operate more efficiently and make prudent expenditures."⁴

Blue Valley is a small cooperative incumbent local exchange carrier operating in rural Kansas. It serves 3853 voice subscribers over 1086 square miles, or approximately 3.55 subscribers per square mile.⁵ Blue Valley's service territory is in an area of Kansas commonly referred to as "Tornado Alley," because it is frequently in the path of tornados. Blue Valley's service territory also experiences other severe weather events, such as ice storms. Most of the terrain of Blue Valley's service territory is very rocky. Blue Valley is the sole reliable provider of voice and broadband 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 facilities in this area.

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. For the most part, this construction project was completed in 2010 and, significantly, the majority of the cost associated with the project was booked by the end of 2010.⁶ This project was funded through loans from RUS. As of 2011, Blue Valley has outstanding loans with RUS exceeding \$32 million.

In the comments and reply comments submitted on the model, the parties identified a number of issues and problems with the Commission's proposed model, inputs and data. In the *Regression Order*, the WCB adopted certain changes to the model to resolve some of the

⁴ *Id.*

⁵ This includes all 12 exchanges served by Blue Valley.

⁶ For a few subscribers, the fiber to the home construction project was not completed until 2012.

identified issues. However, the WCB failed to consider evidence concerning flaws in the model; failed to correct inaccurate data for Blue Valley and other carriers; and adopted inaccurate and non-plausible methodologies. As a result, the regression model adopted by the WCB does not accurately reflect Blue Valley's circumstance; it does not reflect reality; it does not achieve the Commission's stated goals of promoting broadband and creating incentives for rate-of-return companies to operate more efficiently and make prudent expenditures; and it does not comply with the Act's requirement that support mechanisms should be predictable and sufficient.⁷

Blue Valley will be directly and substantially affected by the Commission's benchmarking methodology and the model adopted by the WCB. Accordingly, Blue Valley asks the Commission to review the WCB's *Regression Order*; revise it as shown herein; and stay implementation of a regression model until the demonstrated flaws can be resolved.

I. The Model is Fatally Flawed Because it Relies on Inaccurate Data

In the *USF/ICC Order*, the Commission directed the WCB to compare companies' costs to those of similarly situated companies. The Commission also directed the WCB to consider certain variables in determining companies that are similarly situated, including geographic measures such as land area.⁸ The Commission relied on TeleAtlas data to determine study area boundaries for rural rate-of-return carriers.

A number of parties provided evidence that the TeleAtlas data is inaccurate for many companies and, in some cases, significantly so.⁹ Blue Valley has found that not only is the

⁷ 47 U.S.C. §254(b)(5).

⁸ *USF/ICC Order* at ¶ 217.

⁹ 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., 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

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 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.¹⁰ 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.¹¹ 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

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, filed January 18, 2012, at App. D, 2-7.)

¹⁰ *Order* at ¶25 and fn. 73.

¹¹ *In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8934, ¶291 (1997) (*USF Order*).

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

Further, the WCB acknowledges that the data should be and can be corrected and, in fact, the WCB sets forth a process to correct the data prior to 2014. The WCB provides no explanation as to why implementation of the model cannot be delayed until accurate data is available for all companies, except to say that the Commission anticipated that the high cost loop support benchmarks would be implemented for support calculations beginning July 2012.¹² This, however, is an unreasonable and improper justification for relying on faulty data. On the other hand, there will be little or no negative impact to the Commission's goals caused by delay.

Finally, Blue Valley and other rural rate-of-return carriers cannot rely on the accuracy of the model results when faulty data is used. Therefore, the use of an inaccurate model is contrary to the Commission's stated goal of applying regression analysis in the first place, namely, to provide incentives to carriers to reduce excessive investment and spending. The use of faulty data, some of which will be corrected by 2014, also adds to the unpredictable nature of the mechanism, in violation of the requirement in Section 254(b)(5) of the Act.

Rather than implement a faulty model and waste the time and money of carriers and the Commission with possibly unnecessary waivers, the WCB should correct the geographic data for all carriers before adopting a regression model. Accordingly, implementation of the model should be delayed until accurate geographic data is obtained for all carriers.

¹² *Regression Order* at ¶28.

II. Flaws in the Model Must be Corrected

The WCB model lacks transparency, it is not plausible, and it does not reflect reality. Therefore, the model should not be adopted. 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.¹³ Further, a model must reflect reality.¹⁴ 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, as indicated, 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.

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

¹³ *USF Order*, 12 FCC Rcd 8776, 8913, ¶250 (1997).

¹⁴ *American Iron & Steel Inst. V. EPA*, 115 F.3d 979, 1005 (D.C. Cir. 1997).

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 Commission has acknowledged that an imprecise model applied to rural rate-of-return carriers could have a serious, harmful effect.¹⁵ As shown in Issues I and II, to say that the WCB's model is imprecise is a gross understatement. Thus, more work and analysis needs to be done before a regression model can be adopted and applied to rural rate-of-return carriers.

III. The WCB's Model Will Not Achieve the Commission's Stated Objectives, Is Contrary to the Act, and Will Seriously Harm Blue Valley and Its Customers

According to the Commission, the regression model will "create structural incentives for rate-of-return companies to operate more efficiently and make prudent expenditures."¹⁶ The model adopted by the WCB, however, will not achieve this goal. Blue Valley's analysis of the model shows that the impact to Blue Valley in both capital and operating expenses is driven, in large part, by the fact that the majority of cost associated with Blue Valley's broadband deployment was booked by the end of 2010. Because this investment has been made, there is nothing Blue Valley can do to avoid the impacts caused by its investment in broadband facilities. Thus, rather than create incentives for efficiency, the regression model simply acts to punish Blue Valley for investing in broadband facilities. The Commission's application of the model

¹⁵ *In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC rcd 8776, 8934, ¶ 291 (1997).

¹⁶ *USF/ICC Order* at ¶210.

also has the potentially perverse effect of rewarding carriers that did not invest in broadband and, therefore, have lower costs, by distributing to such carriers universal service support that would have otherwise been distributed to Blue Valley.

The regression model will have a significant adverse impact on Blue Valley and its customers. 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 impact is \$46 per customer per year. The 2013 per customer impact of the "phased in" model impact 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 2015.¹⁷

Annual impacts at this level threaten the viability of Blue Valley and, thereby, 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. As shown by Blue Valley in its comments, this dramatic revenue reduction will lead Blue Valley to be cash flow negative within two years of the model's implementation.

In the comments, Blue Valley and other parties argued that the Commission was inappropriately using the regression model as a prudency review.¹⁸ Blue Valley demonstrated that the FCC and RUS encouraged carriers, like Blue Valley, to deploy multi-use networks capable of providing broadband service and Blue Valley borrowed considerable amounts from RUS to finance this deployment. Blue Valley also demonstrated that RUS performed a rigorous

¹⁷ 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.

¹⁸ Comments of Blue Valley Tele-Communications at 3.

review and analysis before extending the loan to ensure that it was prudent and in accordance with federal requirements.

The application of the regression model, however, acts to arbitrarily determine that this investment was not prudent. As shown in the Declaration of Dr. Janice Hauge, this is not an appropriate use of a regression model. Rather, a model should only be the first step to identify cases where a further look is necessary.¹⁹

The example of Blue Valley shows the practical, harmful effect of arbitrarily determining that investment is not prudent based on a regression model. Although it is obvious, the Commission ignores that carriers cannot "undo" investment already made. For impacts that result from capital investments in broadband facilities, both to capital and operating expense, there is no ability to correct, modify or change the alleged inefficient investment. In this regard, the model, which presumes certain investments were "inefficient" and, without further review, simply reduces support, is nothing more than an arbitrary punishment.

Further, the regression model is not a predictable mechanism for federal universal service support, as required by Section 254(b)(5) of the Act. As shown, the model adopted by the WCB relies on faulty data and counter-intuitive assumptions. This coupled with the fact that whether a carrier's expenses are judged "inefficient" is determined based on the expenses of other carriers, results in a mechanism that is unpredictable. Accordingly, the model does not meet the requirement in Section 254(b) (5) of the Act that federal universal service support mechanisms should be predictable.

Rather than support the Commission's goals of creating incentives for rate-of-return companies to operate more efficiently and make prudent expenditures and promoting the

¹⁹ Comments of the Blooston Rural Broadband Carriers, Declaration and Report of Dr. Janice A. Hauge (Attachment B), filed January 18, 2012, at 5.

advancement of broadband capable networks, the WCB's model will have the opposite effect. The changing nature of the model and the use of flawed data will make it difficult to determine with certainty the effect of the caps over time. The errors in the model fail to reflect reality. And, the WCB's assumption that carriers can undo facilities already placed is flatly wrong. Taken together, these aspects of the model create a paralyzing uncertainty for carriers, like Blue Valley, and, most likely, will cause carriers (or force carriers) to hold back from additional investments of any kind. Thus, the model does not advance the Commission's stated goals.

IV. CONCLUSION

As shown herein, the WCB's rush to judgment has produced a flawed model and *Regression Order* that lacks reasoned decision making. Before adopting a regression model, all errors in the model and data must be corrected, including the boundary data for all carriers and the modeling errors discussed herein. Further, even with these changes, a regression model should be used only to trigger a harder look to determine whether a carrier's costs were truly "inefficient." Accordingly, Blue Valley asks the Commission to review the WCB's *Regression Order*; reverse its adoption of a regression model; and delay the implementation of a regression model until the issues identified herein are addressed.

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

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Certificate of Service

The undersigned hereby certifies that on the 22nd day of June, 2012, a copy of the forgoing **Application for Review 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 16th 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