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June 27, 2012

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Room TW-A325
Washington, DC 20554

Re: *Petition for Stay of the Allband Communications Cooperative*

In the matter of: Connect America Fund, WC Docket No. 10-90
A National Broadband Plan for Our Future, GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers,
WC Docket No. 07-135
High-Cost Universal Service Support, WC Docket No. 05-337
Developing an Unified Intercarrier Compensation Regime,
CC Docket No. 01-92
Federal-State Joint Board on Universal Service, CC Docket No. 96-45
Lifeline and Link-Up, WC Docket No. 03-109
Universal Service Reform--Mobility Fund, WT Docket No. 10-208
(Order No. FCC 11-161)

Dear Ms. Dortch:

This letter transmits for filing in the above dockets the attached **Petition for Stay of the Allband Communications Cooperative along with Attachment 1, Affidavit of Ronald K. Siegel, Jr., Attachment 2, Affidavit of John M. Reigle, and Attachment 3, Affidavit of Paul L. Cooper.**

We are also sending a copy of this letter and the attached pleading via e-mail to Cathy Williams, Nicholas A. Fraser, and PRA@fcc.gov, and to Staff member Amy.Bender@fcc.gov, and to the Commission's copy contractor at fcc@bcpiweb.com.

Respectfully submitted,

ALLBAND COMMUNICATIONS COOPERATIVE

By its counsel

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DLK/cd
Atts

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

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)	
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Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**PETITION FOR STAY OF THE
ALLBAND COMMUNICATIONS COOPERATIVE**

ALLBAND COMMUNICATIONS COOPERATIVE

By its counsel:

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Dated: June 27, 2012

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**PETITION FOR STAY OF THE
ALLBAND COMMUNICATIONS COOPERATIVE**

Pursuant to the Commission's Rules, including 47 C.F.R. § 1.43, Allband Communications Cooperative (Allband) respectfully requests the Commission to stay, as applied to Allband, implementation of the \$3,000 per-line annual funding cap (Rule 54.302) that the Commission adopted in its *USF/ICC Transformation Order*¹ (the FCC Order).

Allband respectfully requests the Commission to immediately grant a permanent stay of the per-line cap as applied to Allband, so as to align its USF-committed revenues needed to pay its Rural Utility Services (RUS) loans and to prevent a default of such loans, and to also prevent an impending close-down of Allband's telephone and broadband network that operates as an incumbent local exchange carrier (ILEC) in a service territory in northeast lower Michigan that, prior to the recent advent of Allband, never had communications services by any carrier.

Allband requests the grant of an immediate stay of the per-line cap as a remedy in addition to continuing to seek prompt relief from the Commission with respect to its pending February 3, 2012 Waiver Petition.

This Stay Petition is supported by the attached June 26, 2012 Affidavits of Ronald K. Siegel, Jr., General Manager of Allband (Attachment 1), John M. Reigle, President of Allband (Attachment 2), and Paul L. Cooper, President of Fred Williamson & Associates, Inc., a consultant to Allband (Attachment 3).

¹ *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*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663 (2011) (*USF/ICC Transformation Order and FNPRM*); *pets. for review pending sub. nom. In re: FCC-11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

I. HISTORY AND BACKGROUND OF ALLBAND COMMUNICATIONS COOPERATIVE.

The Commission has been presented in these dockets with significant information regarding the unique status and circumstances involving Allband's recent creation and development.² Allband is a very new entity, formed as a non-profit cooperative in 2003, which is owned by its customer-members in its service area.

Allband exists because of the 1996 Amendments to the Federal Communications Act, 47 U.S.C. 151, *et seq.*, (the 1996 Act) which established the Universal Service Fund (USF) to encourage universal service in rural areas. Allband, founded several years after the 1996 Act, constitutes a significant success story made possible by the opportunities created by the 1996 Act. Allband has relied substantially upon the 1996 Act, and the USF program, in creating its highly modern network, and in committing to the loans from the Rural Utility Service of the U.S. Department of Agriculture (RUS) to finance the construction of its network to provide communications services to its customer/members and the general public.

A description of Allband is included in paragraphs 3 through 6 of the Affidavit of Ronald K. Siegel Allband's General Manager (Attachment 1 hereto) in support of this Stay Petition:

3. Allband provides service in its Robbs Creek exchange, which comprises 177 square miles located in portions of four (4) counties in northeast Lower Michigan. Robbs Creek, a rural, heavily forested area with an average population density of approximately one premise per mile, remained for decades an unlikely candidate for telephone service, especially a Fiber to the Home (FTTH) network. Due to the goals of the 1996 Act¹ and the Universal Service Fund (USF), Allband is able to proudly provide reliable and life-saving advanced communications in one of the most economically distressed areas of Michigan. Since this area was previously unserved/unassigned², Allband began a long journey of becoming the first ILEC to be formed in decades with the intention of utilizing

² This information has been provided to the Commission in Allband's April 18, 2011 Comments in these dockets, and in previous waiver applications to the Commission, and in Allband's February 3, 2012 Waiver Petition, with attachments, along with information supplied in various meetings and information exchanges with the FCC Staff.

the many benefits of the Universal Service Fund on behalf of its community. Allband represents many of the goals the fund sought to address; more specifically, providing support to insure affordable rates for service for customers in rural areas where the high cost of investment stifled telecommunication growth. By utilizing the fund and by joining the National Exchange Carrier Association (NECA) pools, Allband can recover its costs so that it can provide reliable 911 and traditional exchange services at a price its customers can afford.

4. Allband is the first ILEC to be formed in many years in Michigan. Allband is also the first non-profit telephone cooperative in Michigan and provides one of the most advanced networks in Michigan via pure fiber to the home infrastructure. Until 2006, when Allband activated its first subscriber, Allband's Robbs Creek Exchange was the largest of several unserved/unassigned areas in Michigan. The development of Allband has been a true challenge from both a regulatory and physical development standpoint. It took multiple years to obtain the funding, licenses, waivers and property easements to build our network in an area that is extremely rural and difficult to construct in. By utilizing USF and NECA support, Allband has successfully served an area that for decades was ignored by other carriers due to the high cost of construction and lack of revenue due to low population densities.

5. Allband provides start-of-the-art telecommunication services such as traditional telephone service, free calling features, long distance and, high-speed Internet.

6. For the last five years, Allband has utilized its RUS funding to provide free drop installation to its subscribers in an effort to offset our community's inability to pay for construction due to the economic crisis in our area. Allband has maintained a near perfect customer service record, has not received a single complaint with the MPSC and is proud to provide a cooperative environment where we care for the well-being of our subscribers. After all, Allband was started to provide 911 services in area that lacked traditional telephones and cellular service and saving lives continues to be the cooperative's number one priority.

¹ Communications Act of 1934 as amended by the Telecommunications Act of 1996 (Act).

² For the purposes of this affidavit, an "unserved" area is defined as a geographic region that does not have telephone or broadband services. An "unassigned" area is defined as a geographic area that has never been served by an Incumbent Local Exchange Carrier and is not included in a registered state tariff.

Allband Siegel's Affidavit [paragraphs 7(a) - (e)] also describes the key milestones involving Allband's formation and development:

7. The following timeline of the cooperative's development demonstrates that Allband has met the regulatory requirements needed to utilize Universal Service Funding, a critical component needed to (a) maintain affordable

customer rates and services that are comparable to those provided in urban areas, (b) provide and maintain quality service, and (c) meet its RUS debt obligations associated with the network used to deliver such services:

a. After being denied basic telephone service by GTE at his Curran, MI residence and then left without an alternate solution, now Allband President John Reigle, began coordinating the formation of Allband with Michigan State University in early 2000.

b. On November 3, 2003, after extensive planning and organizational efforts, Allband filed its Articles of Incorporation with the State of Michigan.

c. On July 29, 2004, Allband filed a complete loan application with the USDA Rural Development, the only source of financing available to build its new network, as private lending institutions would not finance such an investment.

d. On August 31, 2004, the MPSC in Case No. U-14200³ granted Allband a temporary license to provide service in its Robbs Creek Exchange, an unserved/unassigned geographical location. A permanent license was granted by the MPSC in Case No. U-14200 on December 2, 2004.

e. Allband obtained RUS funding on Oct. 7, 2004 and began constructing an all fiber, passive optical, state of the art telecommunications network that would allow Allband not only to provide standard telecommunications services, but also ubiquitous access to broadband and other advanced services.

f. On August 11, 2005, the FCC granted Allband's waiver⁴ of certain FCC's rules and allowed Allband to be treated as an ILEC for NECA pooling and Universal Service purposes.

g. On August 18, 2005, the USDA Rural Development Program officially announced a loan for \$8 million to fund the construction of Allband's fiber to the home network.⁵

h. On October 19, 2005, Allband started construction in its Robbs Creek Exchange.

i. On November 10, 2005, the MPSC in Case No. U-14659⁶ granted Eligible Telecommunications Carrier (ETC) status to Allband.

j. On November 30, 2006, Allband activated its first cooperative member.

k. In December 2006, after obtaining the necessary waivers from the FCC, Allband was allowed to join the National Exchange Carrier Association ("NECA") pools as an ILEC. This action allowed Allband to (a) Minimize administrative expenses and (b) Maintain reasonable and stable access rates. Because the Universal Service Administration Company ("USAC") and NECA recognized Allband as an ILEC per its FCC waivers, NECA began providing Interim Common Line Support and Local Switching Support (two of the FCC's USF mechanisms) to the cooperative.

l. In January 2008, Allband began receiving High Cost Loop Support (another of the FCC's USF mechanisms) from USAC/NECA. This support is being used and will be used by Allband to reinvest plant within its Robbs Creek

exchange and recover a substantive portion of the ongoing high cost of providing ubiquitous network facilities and thus, enable Allband to maintain reasonable local exchange consumer rate levels (Currently \$19.90 per month plus taxes and regulatory fees).

³ See, *In the matter of the application of Allband Communications Cooperative for a temporary and permanent license to provide basic local exchange service in the proposed Robbs Creek Exchange*, Case No. U-14200, dated December 2, 2004.

⁴ See, *In the Matter of Allband Communications Cooperative Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules in WC Docket No. 05-174*, released August 11, 2005, (Allband Order).

⁵ USDA Rural Development Loan (RUS) Borrower MI-570-A

⁶ See, *In the matter of the application of Allband Communications Cooperative for designation as an eligible telecommunications carrier pursuant to Section 214(e) of the Telecommunications Act of 1996*, Case No. 14659, dated November 10, 2005.

The Affidavit of John M. Reigle, President of Allband, Attachment 2 hereto, paragraphs 2(a) through 2(e), verifies that he worked for over 10 years to bring telephone service to the unserved area now served by Allband, and that his efforts resulted from his inability to obtain phone service to his home from any existing carrier. As a result, he embarked on efforts with Michigan State University to establish Allband and to seek RUS loans, supported through NECA and the USF Fund, to establish Allband and its network.

The affidavit of Paul L. Cooper Attachment 3 hereto, (paragraphs 3 through 8) also describes the purposes of the 1996 Act, and Allband's reliance on those statutory provisions and programs to establish universal service in Allband's service territory:

3. In 1996, Congress passed an amendment to the Communications' Act.¹ One of the primary purposes of the Act was to establish a Federal Universal Service Fund (USF).² The Act required the Federal Communication Commission (Commission) to:

 "...base policies for the preservation and advancement of universal service on the following principles:

 (1) QUALITY AND RATES – Quality services should be available at just, reasonable and affordable rates.

(2) ACCESS TO ADVANCED SERVICES – Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) ACCESS IN RURAL AND HIGH COST AREAS – Consumers in all regions of the Nation...should have access to ...services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”³

The Act also required the Commission to provide specific, predictable and sufficient Federal support.⁴

4. There are still areas of the United States that have no telecommunications service (unserved areas). Although not a common occurrence, subsequent to the 1996 Act, the Commission has recognized as ILECs a number of carriers that were formed to serve areas unserved by any telecommunications provider. Allband was formed in late 2003 as a non-profit member cooperative to serve a remote and unserved area located in the lower peninsula of Michigan. The Michigan Public Service Commission (MPSC) licensed Allband to provide service in 2004⁵ and the Commission under its authority recognized Allband as an ILEC and allowed it to be a member of the National Exchange Carrier Association (NECA) and to participate in the NECA intercarrier compensation tariffs and pools and to receive Federal USF revenues as an ILEC.⁶
5. Service was not provided in the area now served by Allband because it is remote and difficult to serve with few customers.⁷ No other service provider was willing to incur the very high costs per-customer to provide service. In 2005, when the Commission allowed Allband to receive Federal USF revenues, it was clear that this was a costly undertaking and that a significant level of Federal USF revenue per-line would be required to maintain affordable customer rate levels while deploying the facilities necessary to provide service. The Commission stated in its Order approving Allband’s waivers that:

“Based on the record, we find that all of these waivers are in the public interest because they will facilitate the ability of Allband to serve previously unserved areas.”⁸
6. Relying on the revenues provided by the Federal USF, the Rural Utilities Service (RUS) provided loans to Allband totaling approximately \$8 million to purchase and construct facilities to provide service in the unserved area. Federal USF revenues constitute 84 percent of Allband’s total regulated and non-regulated revenues.⁹ As a very significant portion of Allband’s revenues associated with delivering service in this remote, high-cost area, the Federal USF revenues would, together with Allband’s other revenues, enable Allband to service its debt obligations to RUS. If Allband were to suffer a shortfall in the realization of the Federal USF revenues as ordered by the Commission (the Commission’s \$3000 per line annual cap would

reduce Allband's revenues by 55 percent), Allband would be unable to meet its loan obligations to the RUS.

7. Allband has, since 2005, deployed a network financed using RUS loans, designed to RUS specifications and requirements, to serve the customers in its service area. The current sufficient and predictable level of Federal USF revenues are an essential and critical component to (a) maintaining affordable customer rates and services that are comparable to those provided in urban areas, (b) providing and maintaining quality service, and (c) meeting its debt obligations associated with the network used to deliver such services.
8. At odds with the Commission's prior support for Allband's provision of service to customers in an unserved area by allowing Allband to receive sufficient universal service funding, the Commission's recent Order¹⁰ enacted a rule that will deprive Allband of the majority of these Federal USF revenues.

¹ Communications Act of 1934 as amended by the Telecommunications Act of 1996 (Act).

² Act, Section 254.

³ Act, Section 254(b)(1) to (3).

⁴ Act, Section 254(b)(5).

⁵ The MPSC granted Allband a temporary license to serve customers within a designated service area boundary on August 31, 2004 and granted a permanent license on December 2, 2004, in Case No. U-14200.

⁶ See Order, In the Matter of Allband Communications Cooperative Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules in WC Docket No. 05-174, released August 11, 2005 (Allband Order).

⁷ Allband currently serves 163 lines and has a customer density of 1.09 per square mile.

⁸ Allband Order, paragraph 1.

⁹ Non-regulated revenues are for services that utilize Allband's loop facilities.

¹⁰ In the Matter of 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 an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund in Dockets WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109 and WT Docket No. 10-208, Report and Order Adopted on October 27, 2011 and Released on November 18, 2011. (Order). Published in the Federal Register/ Vol. 76. No. 229/ Tuesday, November 29, 2011/ Rules and Regulations.

Compelling grounds exist to support the prompt grant of stay as requested by Allband herein. Allband's formation was based directly upon the goals, objectives, and policies of Congress as established in the 1996 Act and the opportunities created thereby. Allband established its network through loan commitments entered into in reliance upon the 1996 Act, and in reliance upon various orders and decisions of this Commission, the MPSC, the RUS, and NECA.

From the beginning, all parties and regulatory entities involved in the Allband creation process (incorporating numerous orders, audits, financial grant and mortgage approvals), were fully and continuously aware that Allband would have to substantially rely upon the stream of revenues from the Universal Service Fund (USF) to cover Allband's costs, including the sizeable financial obligation comprising the mortgage payments under its RUS loans, and to cover other costs necessary to provide universal service at reasonable comparable rates in Allband's new service territory. Because Allband's network was constructed so recently, Allband was able to establish an advanced modern system using the best technology then available, all pursuant to the oversight and approvals of the RUS. At the same time, the newness of the capital investment has resulted in Allband's per line costs to be high, since much of the plant remains undepreciated. Also, additional costs are associated with a start-up entity, including creating a new network in a previously unserved area.

II. ALLBAND MEETS THE FOUR-PRONG TEST FOR THE GRANT OF A STAY

Allband asserts that it meets the four-prong test utilized by the Commission for the grant of an immediate stay, as set forth in *Virginia Petroleum Jobbers Association v FPC*, 259 F.2d 921, 925 (D.C. Cir., 1958), and *Washington Metropolitan Area Transit Commission v Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir., 1977). Specifically, Allband asserts herein that: (1) Allband is

likely to prevail on the merits; (2) Allband and its customer members will suffer irreparable harm absent a stay; (3) interested parties will not be harmed if the requested stay is granted; and (4) the public interest favors the grant of a stay for Allband.

A. Allband is likely to prevail on the merits

Allband seeks to persuade the Commission that Allband is likely to prevail on the merits of the per-line cap issue as it applies to Allband.³

1. Violations of Commission’s statutory jurisdiction and authority.

The Commission’s application of the per-line cap to Allband would constitute a violation by the Commission of the plain language of the 1996 Act, and the goals, objections, and intent of Congress in enacting the 1996 Amendments.

The 1996 Act governs and controls this Commission's jurisdiction, authority, and discretion,⁴ and establishes clear and specific mandates relative to Universal Service Fund (USF) matters, as follows:

- Section 254 lays out the principles and policies to be applied “for the preservation and advancement of universal service (Section 254(b), 47 U.S.C. 254(b)).
- Section 254(b)(1) establishes the principle that “Quality services should be available at just, reasonable, and affordable rates.”
- Section 254(b)(2) mandates that “Access to advanced telecommunications and information services should be provided in all regions of the Nation.”
- Section 254(b)(3) provides:

(C) ACCESS IN RURAL AND HIGH COST AREAS.--Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to

³ Allband is a Petitioner challenging this aspect of the Commission’s Order in consolidated Docket No. 11-9900 (10th Circuit).

⁴ Statutes must be interpreted in accordance with the goals, objectives, and intent of Congress. *Schneidewind v ANR Pipeline Company*, 485 U.S. 293; 108 S. Ct. 1145 (1988).

telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

- Section 254(b)(5) requires that “There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”
- Section 254(b)(6) provides that schools, health care providers, and libraries have access to advanced telecommunications services.
- Section 254(b)(7) provides for other principles as the Joint Board and Commission determine are necessary and appropriate “for the protection of the public interest, convenience, and necessity and are consistent with this Act.”
- Section 254(d) provides for contributions by carriers “to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”
- Section 254(e) provides that universal service support provided to Eligible Telecommunications Providers “should be explicit and sufficient to achieve the purposes of this section.”
- Section 254(g) provides in part that certain rates charged by providers “to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas.”
- Section 254(h)(1)(A) provides that a carrier should provide services necessary to a “health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State.”
- Section 254(i) provides that “The Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable.”

Allband has met all of these statutory goals, objectives and requirements of the 1996 Act, commencing with Allband’s formation in 2003 and the subsequent design and build-out of a modern communications system by Allband starting in 2005, and continuing to the present. Allband has also placed full reliance on various orders or directives of this Commission, the Michigan Public Service Commission (MPSC), and loan decisions of the Rural Utility Services (RUS).

In contrast, the per-line cap applied to Allband under the Commission's order violates the plain language, and the goals, objectives, and intent of Congress as stated above. As applied to Allband, the Order would drastically reduce USF revenues needed to cover capital investment and costs already incurred by Allband in accordance with the 1996 Act. The Commission's Order constitutes an unwarranted retroactive reversal of the Acts provisions as implemented by this Commission, the RUS, NECA, the USF, and the MPSC, and as relied upon by Allband. The Order as applied to Allband is counter-productive and destructive of the purposes and objectives for the USF as established by the Act. The Order explicitly violates Sections 254(b)(5), 254(d), and 254(e) that require "specific, predicable and sufficient Federal and State mechanisms to preserve and advance universal service" (Section 254(b)(5), that provides for contributions by carriers for such mechanisms (Section 254(d), and that require that universal service support be provided to Eligible Telecommunications Providers that is "explicit and sufficient to achieve the purposes of this section". (Section 254(e)).

A fundamental defect in the Commission's Order is the failure to apply the Order on a prospective economic basis, in favor of applying it retroactively to Allband, by ignoring the continuing USF funds necessary to support already incurred investment and costs undertaken by Allband under RUS-approved loans. A missing reality derived from the FCC Order is the recognition that the advancement of all the stated reform goals and policies of the FCC Order can be fully achieved without destroying Allband and its taxpayer funded RUS loans. The destruction of Allband and its loans has virtually no impact upon the USF and the surcharges collected nationwide to fund the USF. The amount of Allband's receipts from the ratepayer supported USF, much of which goes to paying the taxpayer-supplied RUS loans, is infinitesimal compared to the

total annual USF budget. In fact, using the data appearing on Appendix B of the Wireline Bureau's April 25, 2012 Order, the total amount "saved" by imposition of the \$3,000 per line cap for all companies exceeding the cap, would total still an extremely small portion of the total USF budget. Ron Siegel's affidavit (Attachment 1, page 5, paragraph 12, which references Table 1, page 6) states:

12. Based on analysis of the Commission's April 25, 2012 Order⁷ under Appendix B (Quantile Regression Cost Per Loop)⁸, ILECs who receive more than \$3,000 per loop receive a total of approximately \$104.7 million from the Universal Service Fund. Out of an estimated \$2 billion allocation, ILECs above the cap only utilize 5.24% of the fund. By implementing the \$3,000 cap, the FCC will reduce funding for rural ILECs by approximately \$33.8 million dollars or 1.7%.

Allband currently receives approximately \$8,000 per loop and approximately \$1.3 million in USF support annually. This accounts for 0.06751% of ILEC allocation of the fund. The cap stands to reduce Allband's support by approximately \$861,000 annually, a total fund reduction of 0.04306%, a small amount when compared to the fund as a whole, but a devastating financial loss to Allband.

Allband finds the savings as calculated to be disproportionate to the universal service benefits and community development that has resulted from Allband and other rural ILECs that exceed the \$3,000 cap. Limiting the recovery of funds already invested into communities like Allband's Robbs Creek exchange for such a small reduction in total USF funding is not in the public interest and defeats the central purpose of the fund, to support carriers in high cost areas.

⁷ See Table 1.

⁸ See in the Matter of Connect America Fund, High-Cost Universal Service Support, WC Docket No. 10-90, WC Docket No. 05-337.

These relatively small amounts do not support the rationale for invoking the per-line cap as articulated in the FCC Order, and particularly on a retroactive basis.

Allband asserts that the financial commitments and obligations incurred by Allband in accordance with the 1996 Act and the orders and policies of this Commission and the RUS, cannot

and need not be retroactively undone. Allband's past investment is presently promoting and advancing universal service objectives.

In contrast to its current approach, the Commission should fashion an approach that promotes future investment to promote universal service, without retroactively destroying the cost reimbursement revenues promised to support the already incurred investment and costs represented by existing RUS loan to promote universal service. Such *ipsi dixit* "policy" reversals by this Commission serve to undercut the credibility of the Commission, and creates uncertainty that will stifle investment toward universal service and toward communication infrastructure generally, on a longer term basis.

Absent a waiver and a stay, the FCC Order as applied to Allband would be contrary to the goals and objectives of Congress, and of Congressional intent, in adopting the universal service provisions of the 1996 Act. While Allband recognizes that the federal courts grant some deference to federal agency interpretations and policy choices in administering a statute, there exists little or any "headroom" for such deference in this situation where the Commission is attempting to reverse its own previous orders, policies, and interpretations, and to retroactively impact Allband (and the RUS) which have reasonably relied upon the 1996 Act and this Commission's previous orders, policies, and interpretations. The Courts often do not grant deference to agency policy or interpretational reverses, and particularly so where such reliance and detrimental impacts exist (e.g., *Federal Communications Commission, et al v Fox Television Stations, Inc.*, 567 US ____ (2012), U.S. Supreme Court Docket No. 10-1293; *United States v Winstar Corp*, 518 US 839 (1996); *California ex rel Bill Lockyer v U.S. Department of Agriculture*, 575 F3d 999 (USCA 9th Circ, 2000).

2. Violations of the Administrative Procedures Act

Allband also respectfully asserts that the Commission's Order, absent a grant of a Waiver and a Stay, would also be arbitrary and capricious, and irrational, as applied to Allband, and would violate the Administrative Procedures Act, 5 U.S.C. § 706(2) as being: (A) "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; (B) "contrary to constitutional right, power, privilege, or immunity"; (C) "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right"; (D) "without observance of procedure required by law"; (E) "unsupported by substantial evidence in a case subject to Sections 556 and 557 of this Title or otherwise reviewed on the record of an agency hearing provided by statute;" or (F) "unwarranted by the facts to the extent that the facts are subject to a trial de novo by the reviewing court."

Despite Allband's filings and other efforts to participate in the Commission's rulemaking process leading to its Order, the FCC Order has not articulated any findings addressing Allband's unique status and compelling arguments. The FCC Order appears to legislatively override, without explanation or concern, previous orders of the Commission and of the MPSC, and decisions of the RUS, which led to the creation of Allband's network (to bring telephone and broadband facilities to new areas). This sharp and largely unexplained reversal of orders and decisions upon which Allband and its customer members, and no doubt RUS itself, relied upon is arbitrary and capricious (and particularly so if not remedied by the grant of a Waiver and Stay).

The sudden, unforeseen, and short timeframe upon which overly large USF revenue reductions would be imposed upon Allband also appears irrational, as it would destroy Allband's recently established telephone and broadband network and services, and would strand the recent investment in same, and would result in direct losses to federal taxpayers as represented by the

ensuing default by Allband of its RUS loans. This result would also be contrary to the purported policy goals of the Commission itself in its FCC Order. Such Commission action would not promote broadband, but would needlessly destroy the promotion of broadband in the areas where Allband has successfully made such services available. Similarly, this destructive result cannot be rationally justified on the basis that Allband has been, or is, inefficient and imprudent in its use of USF revenues or in its cost inaccuracies. No evidence exists that any action of Allband has been unreasonably costly or imprudent. After all, all of its actions have been closely monitored and have been approved by regulatory authorities, including the RUS. There also exists no evidence that any other entity is capable of, or even interested in, providing the telephone and broadband services in Allband's service area.

Allband also asserts that the FCC Order as it stands, absent the grant of a Waiver and Stay to Allband, would also involve an unlawful and unreasonable retroactive reversal of previous orders and decisions of this Commission, the MPSC, and the RUS, upon which Allband and its customer/members, and the public itself, relied upon in committing to the financial obligations of the RUS loans, among others, and in expending the time and resources to provide telephone and broadband network in the unserved areas now served by Allband. Allband respectfully disagrees with the apparent Commission's premise that all future USF revenues can be readjusted and reduced, irrespective of the fact that the USF revenues were approved (and relied upon) as the very security to ensure the payment of the RUS loans that financed the build out of the network in the first instance. There exists an integral link or nexus between the planned USF revenue streams that were committed and approved to support the RUS loans and the other obligations created by the loans. The FCC Order (unless ameliorated as to Allband by the grant of a Waiver and Stay) would be an example of unlawful and unreasonable retroactive decision-making, much in the same sense

that the U.S. Supreme Court found unsustainable in *United States v Winstar Corporation*, 518 U.S. 839; 116 S. Ct. 2432 (1996).

3. Constitutional Violations and Breach of Contract Issues

Absent the grant of a waiver and stay, Allband respectfully asserts that the Commission's Order, as applied to Allband, would constitute constitutional violations and also effect a breach of contract by the United States relative to Allband's RUS loan contracts.

As to constitutional violations, the Commission's Order transgresses the Fifth Amendment which prohibits the confiscatory taking of property as a violation of the Takings Clause and substantive Due Process.⁵ Without correcting the immediate, unconstitutional confiscatory impact of the Commission's Order by granting a Waiver and a Stay, the Order will destroy Allband as an entity, to the detriment of the cooperative's customer-members, and their membership equity interests. The Order would destroy the security (the USF revenues) pledged to ensure the payment of RUS loans and would sharply curtail or disallow, for USF reimbursement purposes, the recognition of lawful and reasonable expenses incurred by Allband to provide service and to meet numerous state and federal regulatory requirements. The immediate and adverse impact upon Allband resulting from the Order to Allband is well documented in Allband's February 3, 2012 Waiver Petition (and attachments), and in the accompanying Affidavits to this Petition for Stay. (Attachments 1, 2, and 3 hereto).

⁵ The effect of the Commission's Order, as applied to Allband and a very small "selected" class of similarly placed entities, also resembles an unconstitutional Bill of Attainder which the United States Supreme Court applied against Congressional or legislative acts. See, *United States v Lovett*, 328 U.S. 303, 315 (1946). Such a small, selected class of similarly situated companies may have been identified and deliberately targeted prior to the Commission's Order for differential punitive treatment, as being outside of the "market-based" economic model favored by the Commission, applied inflexibly by the Commission in this instance.

Absent a Waiver and a Stay, the Constitution prohibits the Commission from destroying Allband by setting rates or promulgating rules which constitute a confiscatory taking. Allband's assertion that the Commission's Order results in an unconstitutional confiscation of Allband's property is established by the analysis of the United States Supreme Court when evaluating the constitutional requirements applicable to ratemaking. In *Bluefield Waterworks & Improvement Co. v Public Service Comm'n of West Virginia*, 262 U.S. 679, 692-693; 42 S. Ct. 675 (1923), the Court stated in relevant part that: "What annual rate will constitute just compensation depends upon many circumstances, and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts.... The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties...."⁶ Allband differs in some ways from private investor utilities, regulated on a rate of return basis, but, in this instance, the Commission's Order serves to destroy the financial soundness of the company, and Allband's ability to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

In addition, the Commission's Order, as applied to Allband, must be at least consistent with the requirements of *Hope Natural Gas* allowing for returns "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital." The Commission's Order should not "jeopardize the financial integrity of the compan[y], either by leaving [it] insufficient operating capital or by impeding [its] ability to raise future capital" and

⁶ The Court had previously recognized such a taking in *Covington & Lexington Tpk. Rd. Co. v Sandford*, 164 U.S. 578, 597 (1896) and there is a long line of cases following this holding. For example, *Pa. Coal Co. v Mahon*, 260 U.S. 393, 415 (1922) held the government may effect a taking without physical occupation or appropriation if it "goes too far..."; The "power to regulate is not a power to destroy..." *R. R. Comm'n Cases*, 116 U.S. 307, 331 (1886).

should permit returns sufficient “to compensate current equity holders for the risk associated with their investments.” (See, *Duquesne Light Co. v Barasch*, 488 U.S. 299 at 312 (1989), *Fed. Power Comm'n v Natural Gas Pipeline Co.*, 315 U.S. 575, 603 (1942) (Black, J. concurring), and *Fed. Power Comm'n v Hope Natural Gas Co.*, 320 U.S. 591 (1944), at 601 and 603).

The Commission is not exempt from the above constitutional requirements. Allband asserts that the Commission in part is a rate-making agency, and that the Commission does not have the constitutional or statutory authority to fashion orders designed to selectively destroy companies, or to pick winners and losers, and to dictate nationwide economic restructurings not expressly authorized by statute, whether such destructive outcomes were intended or not.⁷ The Commission here should recognize the “economic impact of the regulation” on Allband, “the extent to which the regulation has interfered with distinct investment-backed expectations,” and “the character of the governmental action.” While the Commission Order may not directly constitute a physical invasion of Allband's property, its impact is the same because at some near point Allband's assets will be claimed by creditors or successors in interest (See, *Penn Central Transportation Co. v City of New York*, 438 U.S. 104, 124 (1978)).

The Commission's Order also constitutes the kind of retroactive regulatory action the Court rejected in *United States v Winstar Corporation*, 518 U.S. 839; 116 S. Ct. 2432 (1996), in which the Federal Home Loan Board promulgated rules to encourage investors in good standing to take over ailing banking thrifts by counting goodwill as an asset, with a premise the rules would not change. However, subsequently Congress forbid such thrifts from using goodwill credits for

⁷ Even if there is dispute as to whether the Commission is not a rate-making agency for purposes of its confiscation of Allband's property, the Constitutional prohibition against non-possessionary regulatory taking is clearly established in *Lucas v South Carolina Coastal Council*, 505 U.S. 1003, 1015; 112 S. Ct. 2886 (1992), which held a non-possessionary regulation may constitute a per se taking if it deprives the owner of “all economically beneficial or productive use of land.” The Commission's Order here literally will deprive Allband of the use of its property, absent a waiver.

required reserves -- a retroactive reversal of policy that rendered the Appellant (*Winstar*) insolvent. The Court ruled such Congressional action constituted a breach of contract permitting awards of damages to *Winstar* and other thrifts that had contracted with the FHLB to take over ailing thrifts, and that suffered damages or harm from Congress' change in the rules. Here, just like the situation in *Winstar*, Allband entered into contracts with the RUS, taking out loans in reliance upon the premise that Commission regulatory rules and orders governing the USF under the 1996 Act would remain unchanged (or would not be retroactively changed), particularly where all parties knew that the ongoing USF revenues constituted an absolute prerequisite to repay the loan principal and interest.

To be clear, Allband respectfully asserts herein that the Commission's order, absent a waiver and a stay, would also constitute a breach of contract by the United States Government (including overall its subsidiary agencies such as the RUS and the USF) relative to the loan agreements and contracts between the RUS and Allband, and also an unlawful interference by the Commission in the already existing loan contracts upon which Allband has relied upon and under which Allband has performed. Allband asserts that there exists a binding reciprocal contractual obligation between Allband's duty to pay the principal and interest on its RUS loans (undertaken to construct Allband's network) and the continued payment from the USF to cover the RUS loan payments. The same is true for a reasonable level of USF support to cover operating and maintenance costs of Allband's network and to make it possible for Allband to provide universal service to its service territory as originally contemplated by the 1996 Act, previous regulatory orders, and all stakeholders involved in the establishment of Allband for that very purpose.

Without a grant of a Waiver Petition and a Stay by the Commission, both Allband and the RUS would be harmed by the Commission's retroactive reversal of its previous interpretation and

application of the 1996 Act, and from the new changes to the USF program. Allband, supported by *Winstar*, asserts its contracts with RUS need not contain promises to refrain from regulatory change in order to establish a breach of contract action against the federal government. Similar to the *Winstar* situation, Allband also urges that, based upon estoppel and fairness considerations, the Commission should refrain from reversing or disregarding previous regulatory orders and decisions, and should not apply its Order retroactively to Allband.

The United States Supreme Court decision last week (June 21, 2012) in *Federal Communications Commission, et al v Fox Television Stations, Inc.*, 567 US ____ (2012), U.S. Supreme Court Docket No. 10-1293, also made rulings that have analogous application here. While that case involved First Amendment free speech issues, the Supreme Court in *Fox* invalidated the FCC's orders on the basis, in part, that the FCC orders failed to give the broadcasters sufficient notice of what would be considered a violation of FCC's previous orders. The Court stated in relevant part (slip op, pp 11-13):

A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required. See *Connally v. General Constr. Co.*, 269 U. S. 385, 391 (1926) (“[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law”); *Papachristou v. Jacksonville*, 405 U. S. 156, 162 (1972) (“Living under a rule of law entails various suppositions, one of which is that ‘[all persons] are entitled to be informed as to what the State commands or forbids’” (quoting *Lanzetta v. New Jersey*, 306 U. S. 451, 453 (1939) (alteration in original))). This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment. See *United States v. Williams*, 553 U. S. 285, 304 (2008). It requires the invalidation of laws that are impermissibly vague. A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *Ibid.* As this Court has explained, a regulation is not vague because it may at times be difficult to prove an incriminating fact but rather because it is unclear as to what fact must be proved. See *id.*, at 306.

Even when speech is not at issue, the void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. See *Grayned v. City of Rockford*, 408 U. S. 104, 108–109 (1972)....

* * *

...The Commission’s lack of notice to Fox and ABC that its interpretation had changed so the fleeting moments of indecency contained in their broadcasts were a violation of §1464 as interpreted and enforced by the agency “fail[ed] to provide a person of ordinary intelligence fair notice of what is prohibited.” *Williams, supra*, at 304. This would be true with respect to a regulatory change this abrupt on any subject, but it is surely the case when applied to the regulations in question, regulations that touch upon “sensitive areas of basic First Amendment freedoms,”.... [cite omitted].

The Supreme Court in *Fox* also noted that the FCC order’s waiver of a penalty or forfeiture (similar to another accommodation such as a temporary waiver) also does not cure the Due Process problem, stating in relevant part (slip op, p 14):

...This “policy of forbearance,” as the Government calls it, does not suffice to make the issue moot. Brief for Petitioners 31. Though the Commission claims it will not consider the prior indecent broadcasts “in any context,” it has the statutory power to take into account “any history of prior offenses” when setting the level of a forfeiture penalty. See 47 U. S. C. §503(b)(2)(E). Just as in the First Amendment context, the due process protection against vague regulations “does not leave [regulated parties] . . . at the mercy of *noblesse oblige*.” *United States v. Stevens*, 559 U. S. ___, ___ (2010) (slip op., at 18). Given that the Commission found it was “not inequitable to hold Fox responsible for [the 2003 broadcast],” 21 FCC Rcd., at 13314, and that it has the statutory authority to use its finding to increase any future penalties, the Government’s assurance it will elect not to do so is insufficient to remedy the constitutional violation.

The Supreme Court in *Fox* (slip op pp 14-15) also found that “reputational injury” provided further reason for granting relief from the FCC order, stating:

In addition, when combined with the legal consequence described above, reputational injury provides further reason for granting relief to Fox. Cf. *Paul v. Davis*, 424 U. S. 693, 708–709 (1976) (explaining that an “alteration of legal status . . . combined with the injury resulting from the defamation” justifies the invocation

of procedural safeguards). As respondent CBS points out, findings of wrongdoing can result in harm to a broadcaster's "reputation with viewers and advertisers.".... The challenged orders could have an adverse impact on Fox's reputation that audiences and advertisers alike are entitled to take into account.

The Supreme Court also refused to find that the required notice was obliquely provided by some other FCC Order, stating in relevant part (slip op, p 15):

An isolated and ambiguous statement from a 1960 Commission decision does not suffice for the fair notice required when the Government intends to impose over a \$1 million fine for allegedly impermissible speech....

The Supreme Court in *Fox* thereupon ruled that the FCC's standards as applied were vague, and that the FCC's orders "must be set aside." The Court noted that it "...resolves these cases on fair notice grounds under the Due Process Clause." (slip op, p 17).

Allband asserts that the Commission order, if applied to Allband, similarly violates Due Process principles. Allband reasonably relied upon the 1996 Act, and all of the regulatory orders, decisions, and actions which endorsed Allband and induced Allband into committing to significant RUS loan commitments, along with other contractual and operational commitments and costs. Now, in 2011, this Commission attempts to reverse its interpretations and decisions as applied to Allband by 180 degrees. The Commission order, at the same time, did not provide Allband any fair notice of this change that meets constitutional standards of Due Process. The Commission's order purports to curtail USF revenues upon which both Allband and the RUS, and Allband and its customers/members, and the general public, relied upon to fund the long-term loan commitments and payment requirements. The Commission order comprises a violation of the "doctrine of invitational error" -- to induce a party to undertake substantial commitments based upon promised USF revenues, to be followed by Commission action to punish Allband for following the regulatory scheme by a post-hoc retroactive reduction of the promised funds needed to support the

investment already incurred under the promised structure. This constitutes an egregious violation of both substantive and procedural Due Process principles.

B. Allband, its member/customers, and the public served by Allband, will suffer irreparable harm absent a stay

Allband asserts that the Commission should grant a stay of its order because, absent a Stay, Allband and its member/customers and the public served by Allband, will suffer irreparable harm. The irreparable harm that will result is both tangible and intangible.

First, the imposition of the order, absent a Waiver and Stay, will cause immediate economic losses caused by the destruction of the business model that Congress itself set up in the 1996 Act -- namely, the establishment of a Universal Service Fund to finance the construction and operation of communications services in rural areas that would not be served by the forces of market competition. Allband has documented in its February 3, 2012 Waiver Petition, and in the exhaustive attachments thereto, that Allband cannot continue to meet its RUS loan obligations and continue in business with the Order's proposed cuts in USF funding. The economic losses caused by the Order, in the absence of a waiver and stay, are sizable to Allband and wholly unnecessary because:

- the lost USF revenues will cause the closure of Allband on a prompt basis, thereby foreclosing the expansion of telephone and broadband services by Allband in northeast Michigan, along with the attendant ILEC services being provided by Allband to the general public;
- the loss of Allband's services and business activity will halt and reverse the economic development opportunities that Allband has recently created by the establishment of its network and services;
- the lost USF revenues will destroy the financial security which underlies the USF loans, and will thereby destroy the value of the RUS mortgage, financed at taxpayer expense; and

- the loss of USF revenues will strand a recently established quality network that has been constructed to promote and provide telephone and broadband services, which is an unnecessary abandonment of a fully functioning network that has directly addressed the objectives of the 1996 Act.

The irreparable harm to Allband that will occur from the Commission's order, absent a Waiver and Stay, is documented in Allband's February 3, 2012 Waiver Petition (with attachments) and in the attached Affidavits of Allband President John Reigle, Allband General Manager Ronald Siegel, and Paul Cooper. The Affidavit of Ronald Siegel (Attachment 1) states in part (paragraph 2):

...Absent a stay, the cost recovery reductions caused by the implementation of the Part 54.302 rule will harm Allband by providing insufficient revenues to:

- Continue to provide voice service to any of its customers and,
- Pay the principal and interest on its RUS loan and,
- Continue operations as a telecommunication carrier.

The Siegel Affidavit (paragraphs 8-11, 13-14) states as follows:

8. Part 54.302 limiting support to \$3,000 per line annually has the effect of retroactively depriving Allband of Federal USF revenues for recovery of investments already made in its network and associated operating expenses in full reliance upon all existing regulatory requirements and procedures that have been in place since Allband's formation. If the Allband Board of Directors and management had known that part 54.302 would have been enacted, the formation of Allband to service the Robbs Creek exchange would not have been explored and Allband would have not pursued a loan from the Rural Utility Service to finance the network facilities needed to provide service. One of the effects of this Commission's proposed rule changes is that Allband will be unable to repay its loan to RUS and it will default on its promissory note with the United States of America.

9. If Part 54.302 rule is not stayed, Allband will be forced to cease operations due to a lack of operating revenue recovery. The direct result will be that lifeline telephone service will no longer be available effective in 2012, after the effective date of the reform changes. Per Allband's previously submitted waiver request to the FCC, Allband would have to increase its fees for basic local exchange service to \$174.90 per month in 2012 to remain operational. It is clearly unreasonable to expect customers to bear these rate increases and to keep their

phone service. In addition to the fact that customers could not afford these rates, such rates would be at odds with the Act's requirement for affordable rates that are comparable to those charged in urban areas.

10. Allband cannot recover the lost revenues from its switched inter-carrier compensation rates. In its Order, the FCC has capped and is, over a transition period, eliminating most of the switched inter-carrier compensation revenue. As a consequence, Allband will not receive a significant amount of the Federal USF revenue losses from this revenue source. The only inter-carrier compensation rate that was not capped by the Commission is the intrastate originating switched access rate. If Allband tried to recover its Federal USF revenue loss from this revenue source, this rate would have to increase exponentially. An increase is clearly not feasible because Allband would no longer have interexchange carriers willing to serve customers in its service area. Even in the unlikely occurrence that interexchange carriers continue to provide service, when these switched access rate increases are flowed through to increases to customer toll rates, it is quite likely that all the landline toll customers in Allband's service would disconnect this service.

11. Allband cannot recover the lost Federal USF revenues from Michigan's state fund. Said fund was established by state law and MPSC rule to specifically recover only intrastate access charge reductions adopted in 2010 by the MPSC.

* * *

13. Approval by the Commission of the stay is necessary and in the public interest to ensure that consumers in the area served by Allband continue to receive voice service and emergency services.

14. The Allband Board of Directors and Management respectfully request that the Commission recognize the accomplishments Allband has achieved and the benefits it has brought to its community in a relatively short period of time, and that the Commission stay, as applied to Allband, all USF support reductions as presented in the Commission's order and revised rules. This requested Commission action will allow Allband to continue providing telephone service pursuant to the requirement of the Universal Service Act while the FCC decides on its Waiver request, and is essential to the repayment of its debt obligations to the United States Government.

The Affidavit of Allband President John Reigle (Attachment 2, paragraphs 2f through p) states:

2. The recent Universal Service Fund (USF) and inter-carrier compensation reform implemented by the Federal Communications Commission (FCC) will prevent Allband from receiving funds needed to ensure that people in Allband's Robbs Creek exchange and other un-served areas of Michigan receive dependable 911, traditional telephone and broadband services....

* * *

f. Per the Telecommunications Act of 1996, the FCC's mission is to enforce the act and ensure that every citizen has access to affordable

telephone and dependable 911 services. Rather than creating unnecessary funding barriers for companies like Allband who actually use a very small portion of the fund's budget, the FCC should recognize that companies like Allband need financial support through Federal USF funds to serve high cost exchanges and current un-served areas in order to meet the goals of the Universal Service Fund. Funding caps as imposed in the FCC order are not adequate to serve the needs of rural carriers who operate in rural high-cost locations, nor is it enough to support investment in areas that to this day do not have traditional telephone service.

- g. If a stay is not granted, it is not a matter of if we go out of business; it's a matter of when. Allband offers service to everyone who wants service in our area and we have no way of increasing the population base needed to increase revenue. If Allband is not granted a stay from the FCC's high cost loop cap, Allband will not survive the year, will default on its RUS loan and the cooperative will have to close its doors; a large setback for a now successful rural community.
- h. The FCC's order is jeopardizing Allband's ability to continue providing reliable service. Wireless does not work in areas that are as heavily forested as our area is. The only reliable service is provided by Allband's network.
- i. Allband jumped through multiple hoops for many years to become an ILEC (and was supported in this process by the FCC) so that Allband would be eligible for USF support. In fact, Allband built an entire 20-year business plan around the foundation and rules of the USF fund, a fact presented to the FCC during its ILEC waiver request process. We have met all the requirements and implemented all of the deliverables ordered by our government; we can do no better.
- j. Allband's RUS loan was dependent on receiving USF support. By removing our funding, our business model and ability to pay back our loans will be significantly harmed. To date, neither the FCC nor RUS has publicly addressed how USF reform will affect RUS rural development loan security, other than an unproven waiver process.
- k. Allband offers the most reliable form of telephone and high-speed broadband available. We are more reliable than wireless and use a better technology for offering education, health care, security, and emergency services.
- l. Allband has received recognition for its efforts from local and state government offices, and from the USDA Rural Development offices for its efforts to service rural low income, high unemployment areas.
- m. We have expanded educational opportunities and developed more economic stimulus and new jobs in this community than anyone else in the last 50 years. Allband has been a terrific investment in this

community and for that matter, this country, and it has the potential to better itself if given the support it deserves from the USF.

- n. Allband has survived during the economic meltdown that this country has had and is experiencing. The idea that our greatest threat is our own government is very disturbing. We were able to obtain bridge loan financing, lease equipment, and facilities based on the USF support mechanisms that are in place. We have no collateral and we cannot borrow money from anyone else due to RUS rules and liens.
- o. Allband has entered into several long-term leases and contracts based on the USF support mechanisms that were established. Allband was given no forewarning that this reform would happen when we approached business partners to invest in our community and now the economic stability of said partners are also threatened by the FCC's order.
- p. Another troubling fact is the United States Postal Service has closed our post office and there will be no other form of traditional postal communication. The pay phones at public premises in our area have been removed from every location. There is no city center in our community or central place at which people meet. Allband serves four counties that rely heavily on our services for emergency services, lifeline and access to the outside world.

The Affidavit of Paul Cooper (Attachment 3) discusses the Rule limiting USF support to \$3,000 per line annually (paragraph 9), and states in part:

This rule has the effect of retroactively depriving Allband of Federal USF revenues for recovery of investments already made in its network and associated operating expenses. Had Allband known that this rule limiting its Federal USF revenues would be enacted, it would not have (and could not have) undertaken forming the ILEC to provide service to customers in this unserved area, and Allband could not have obtained loans from RUS (that rely in significant part on these revenues for repayment) to finance the network facilities necessary to provide service.

The Cooper Affidavit (paragraph 10) calculates the drastic reduction in the per-line USF contributions, and concludes (with specifics in the footnotes) that:

The RUS loan covenant with Allband requires that Allband have sufficient revenues to at least pay the interest on the RUS loans. [fn omitted]. The effect of the proposed rule change is that Allband will be unable to pay the entire annual RUS loan payment of \$638,147, of which \$324,913 is interest, annual loan interest, even

in the first year of the phase in of the rule when the annual revenue reduction is \$302,576. [fn omitted].

The Cooper Affidavit (paragraph 11 and footnote) calculated Allband's regulated and non-regulated revenues, and concludes:

The revenues lost by Allband as a result of the Commission's rule change to cap support at \$3,000 annually (\$907,728 or \$5,569 per-line) are approximately 55% of its total regulated plus non-regulated revenues.

The Cooper Affidavit (paragraphs 12, 13, 14) also establishes that the USF revenue loss under the Order cannot be made up through (i) rate increases to Allband's customers, which already satisfy rate levels under the standards of Section 2.54(b)(1) and (3) of the Act; (ii) from switched intercarrier compensation rates; or (iii) from the Michigan Universal Service Fund.

In addition to the economic harm detailed above, the Commission's Order will cause irreparable harm to Allband, its member/customers, and the general public, in additional ways. The economic destruction of Allband, and the closure of its network, will foreclose the ability of Allband and its local employees to carry out the expansion of customer services in the geographical areas they know best (in contrast to vast national company conglomerates who have refused to provide any services in these areas for 147 years), and will foreclose Allband's ongoing efforts to promote broadband, and economic development opportunities in northeast Michigan. These ongoing efforts, if not impeded by the Order, will add communications infrastructure and customers, and will better serve emergency, health, education, and other services, and will drive down the per-line costs of services, given a reasonable amount of time. The cutoff and presumptive loss of the impending and expanding economic opportunity made possible by the recently-established Allband network is itself a major aspect of the irreparable harm that would result from the Commission's Order, absent a waiver and stay. This is also true because Allband,

if it is allowed to operate, has created a backbone for the expansion of service in previously unserved areas, which provides opportunities for interconnecting carriers to expand communications services as intended by the 1996 Act.

The irreparable injury that would result to Allband, and its member/customers, and the public is not limited to the above important economic issues and impacts. Irreparable injury also attaches to the loss of customers and the goodwill of customers, the creation of customer confusion, distrust, and damage to reputations.⁸ After Allband and its employees and member/customers have passionately and successfully created Allband's telephone and broadband network, and after they have followed all requirements and orders of this Commission, the MPSC, and the RUS in good faith, why should they suffer the inherent rebuke that would result from the failure that the Commission's orders would cause? How can Allband, and its member/customers, be protected from the ensuing irreparable harm to their employer status and to their reputations? The irreparable harm that would flow from such an unforeseen reversal of this Commission's interpretation and policy in implementing and carrying out the 1996 Act regarding universal service would reverberate on many levels, and would diminish the credibility of this Commission and the RUS. Allband asserts, with humility, that the Commission reversal of its orders and policies under the 1996 Act, upon which Allband has in good faith followed and relied upon, cannot be sustained and is barred by estoppel principles.

Fortunately, all of the policy reforms that the Commission may intend with its Order (e.g., moderate the cost of the USF, improve cost efficiencies, promote broadband development on a

⁸ See *Federal Communications Commission, et al v Fox Television Stations, Inc.*, 567 US ____ (2012), U.S. Supreme Court Docket No. 10-1293; *BellSouth Telecommunications, Inc. v MCIMetro Access Transmission Services LLC*, 425 F.3d 964, 970 (11th Cir. 2005); *Ferrellas Partners, L.P. v Barrow*, 143 Fed. App. 180, 190 (11th Cir. 2005); *Duct-O-Wire Co. v US Crane, Inc.*, 31 F.3d 506, 509-10 (7th Cir. 1994);

faster basis) can all readily be achieved without destroying Allband (and the relatively few similarly situated companies) that relied in good faith upon the 1996 Act, and regulatory orders and loan commitments to actually carry out what Congress intended in the 1996 Act. These new entities, such as Allband (and its member/customers) should not be retroactively punished for relying in good faith, at face value, on what Congress provided for in the 1996 Act.

C. No other interested parties would be injured by a grant of the requested stay to Allband

Allband cannot conceive of any other interested parties that would be injured by a grant of the requested stay to Allband.

First, if Allband were to continue to receive the USF revenue funds, as promised, represented, and committed to on an ongoing basis at the time Allband was formed, licensed, authorized, and approved by this Commission, the MPSC and the RUS -- such a result would be a known event anticipated by all other parties or stakeholders. Neither Allband nor any other party could have predicted in advance the results or provisions of the Commission's Order until it was released in October 2011.

Second, if this Commission and the RUS adhere to their pre-2011 commitments and contractual obligations, no other party or stakeholder can claim any injury or prejudice. Allband's share of the USF funds (as all USF funds), are paid by ratepayers and not by "competing" firms (which do not exist in Allband's territory) or by federal budgets or in taxes.

Third, no harm should be accorded to Allband's allocation and receipt of USF funds to advance the various objectives and purposes of Congress in the universal service fund provisions of the 1996 Act. Congress has set an overriding federal policy on these issues, which should be respected and enforced accordingly.

Fourth, Allband's share of the USF payments are miniscule and infinitesimal compared to the national USF, and can hardly create burdens on other customers or the USF itself. Moreover, the group of the relatively few entities that might be similarly situated to Allband, if any, also comprise as a group an infinitesimally small portion of the USF. Also, such "burden" can be expected to decrease as the entities expand services and adhere to the goals and objectives of the USF.

Fifth, Allband is unaware of any evidence in the record in this overall proceeding that supports the theory that the cost of surcharges to fund the USF is burdening customers on a national basis, or that the destruction of Allband (or similarly situated companies) serves any useful purpose except to promote some hidden political or self-serving economic agenda having nothing to do with the goals and objectives of Congress as established by the universal service provisions of the 1996 Act.

Since neither the record nor the FCC Order, nor any presentations of any commentator or party, suggests any injury or prejudice that would result to any party from the grant of both a Waiver and Stay to Allband, the inescapable conclusion must be that no such imagined injury or prejudice exists.

D. The grant of a stay to Allband is consistent with the public interest

Allband asserts that a grant by the Commission of a waiver and stay is consistent with the promotion of the public interest.

First, with respect to the public interest in Michigan, Allband in a relatively short span of time has been highly successful in designing, constructing, managing, and operating a highly modern communication infrastructure fully capable of providing high speed telephone and

broadband services on a reliable basis. Allband as an ILEC also fulfills important public service and emergency service requirements in its service territory.

Second, Allband is a success story relative to carrying out the goals, objectives, and purposes of Congress in the 1996 Act to promote universal service. These goals, objectives, and purposes, cannot be achieved overnight, but are a continuum, which Allband has successfully pursued and implemented since its first customer in 2006. The successful results obtained from Allband's creation itself demonstrates that the grant of a stay to Allband is consistent with the public interest.

Third, Allband has enjoyed community and statewide support throughout its formation. Allband was not formed from a personal agenda of a well-connected few, but from a broad base of support on a local and statewide basis. The funds needed to research the formation of Allband, and to establish Allband, was not supported by advances from the USF, but was supported by funds granted by Michigan State University to promote communications and economic development. Allband was not created by officials of the state or federal government, but was created by local residents, in four counties of Michigan who committed to financing a non-profit communications cooperative. Allband was not created to promote the economic interest of a few, or to transfer perks or benefits of a few at the expense of the USF, or to engage in waste, inefficiencies, or imprudent investments. Rather, Allband was created and established to engineer and construct a modern telephone (and broadband capable) network for the present and future, in areas principally unserved in any way, in full compliance and in good faith reliance upon all requirements of state and federal law.

Fourth, Allband also provides the foundation for future economic development and opportunity in northeast Michigan. Allband has created opportunities for employment and career advancement, albeit its Staff is small and highly efficient, and its vendors are among the best in the industry. In short, Allband, due to the 1996 Act and the USF, has transformed its service area of northeast Michigan from a “black-hole” of non-communications, to a “bright light” of hope and opportunity. The fact that achieving all potential benefits of this effort takes longer than the 2006 date of its first customer, or the 2008 date of its first USF support, does not justify the conclusion that Allband should be destroyed and its recent investment should be wasted and stranded.

The grant of a full Waiver and Stay to Allband is thus in the public interest. No facts or reasoning has been presented in these or any other proceedings to suggest that the converse is credible.

III. CONCLUSION AND RELIEF

Allband Communications Cooperative respectfully requests the Commission to grant its February 3, 2012 Waiver Petition, and to also now grant a Stay of its Order (or Orders) as applied to Allband.

Allband also respectfully asserts that the timeframe of an approved Waiver and Stay, should align with the loan commitments and obligations associated with federal loans approved by the Rural Utility Service, in accordance with the regulatory framework established by the 1996 Act.

At the very minimum, the Commission should grant a Waiver and Stay to Allband for at least as long as it takes for the Commission to rule on all issues in this case, and until a final Court ruling is rendered upon the Commission's Order.

Allband requests such further and consistent relief that is lawful and reasonable.

Respectfully submitted,

ALLBAND COMMUNICATIONS COOPERATIVE

By Its Counsel:

Don L. Keskey (P23003)
Public Law Resource Center PLLC
505 N. Capitol Avenue
Lansing, MI 48933
Telephone: (517) 999-7572
E-mail: donkeskey@publiclawresourcecenter.com

Dated: June 27, 2012

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
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High-Cost Universal Service Support)	WC Docket No. 05-337
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Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
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Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Line-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**ATTACHMENT 1 TO
PETITION FOR STAY OF THE
ALLBAND COMMUNICATIONS COOPERATIVE**

**AFFIDAVIT OF RONALD K. SIEGEL, JR.
GENERAL MANAGER, ALLBAND COMMUNICATIONS COOPERATIVE**

Dated: June 27, 2012

AFFIDAVIT OF RONALD K. SIEGEL JR., GENERAL MANAGER
ALLBAND COMMUNICATIONS COOPERATIVE

I, Ronald K. Siegel Jr., being of lawful age and duly sworn, state as follows:

1. My name is Ronald K. Siegel Jr. My business address is 7251 Cemetery Rd., Curran, MI 48728. My title is General Manager of Allband Communications Cooperative (“Allband”), and have worked for the cooperative in a management capacity since 2004. I am responsible for overseeing the daily operations of Allband, regulatory affairs, project development, community outreach and the general viability of the cooperative. I have conducted extensive research and project management in Allband’s rural area since 2002 and have actively pursued ways to correct the communication digital divide that exists between rural and urban areas in Michigan.

2. I submit this Affidavit in support of the Stay request of Allband Communications Cooperative (Allband) of the FCC’s Part 54.032 rule. I hereby verify that as the General Manager of Allband, I have reviewed the stay and verify the facts asserted and I have supervised the compilation of the stay request. Absent a stay, the cost recovery reductions caused by the implementation of the Part 54.302 rule will harm Allband by providing insufficient revenues to:

- Continue to provide voice service to any of its customers and,
- Pay the principal and interest on its RUS loan and,
- Continue operations as a telecommunication carrier.

Allband respectfully petitions the Commission to stay for Allband the implementation of the Part 54.302 rule, based on the facts presented herein, until the Commission acts on Allband’s previously submitted Waiver Request of the Part 54.302 rule.

Allband respectfully requests that the Commission promptly review and approve this stay because the harm described herein will occur on July 1, 2012 if the Part 54.302 changes are implemented for Allband.

3. Allband provides service in its Robbs Creek exchange, which comprises 177 square miles located in portions of four (4) counties in northeast Lower Michigan. Robbs Creek a rural, heavily forested area with an average population density of approximately one premise per mile, remained for decades an unlikely candidate for telephone service, especially a Fiber to the Home (FTTH) network. Due to the goals of the 1996 Act¹ and the Universal Service Fund (USF), Allband is able to proudly provide reliable and life-saving advanced communications in one of the most economically distressed areas of

¹ Communications Act of 1934 as amended by the Telecommunications Act of 1996 (Act).

Michigan. Since this area was previously unserved/unassigned², Allband began a long journey of becoming the first ILEC to be formed in decades with the intention of utilizing the many benefits of the Universal Service Fund on behalf of its community. Allband represents many of the goals the fund sought to address; more specifically, providing support to insure affordable rates for service for customers in rural areas where the high cost of investment stifled telecommunication growth. By utilizing the fund and by joining the National Exchange Carrier Association (NECA) pools, Allband can recover its costs so that it can provide reliable 911 and traditional exchange services at a price its customers can afford.

4. Allband is the first ILEC to be formed in many years in Michigan. Allband is also the first non-profit telephone cooperative in Michigan and provides one of the most advanced networks in Michigan via pure fiber to the home infrastructure. Until 2005, when Allband activated its first subscriber, Allband's Robbs Creek Exchange was the largest of several unserved/unassigned areas in Michigan. The development of Allband has been a true challenge from both a regulatory and physical development standpoint. It took multiple years to obtain the funding, licenses, waivers and property easements to build our network in an area that is extremely rural and difficult to construct in. By utilizing USF and NECA support, Allband has successfully served an area that for decades was ignored by other carriers due to the high cost of construction and lack of revenue due to low population densities.
5. Allband provides start-of-the-art telecommunication services such as traditional telephone service, free calling features, long distance and high-speed Internet.
6. For the last five years, Allband has utilized its RUS funding to provide free drop installation to its subscribers in an effort to offset our community's inability to pay for construction due to the economic crisis in our area. Allband has maintained a near perfect customer service record, has not received a single complaint with the MPSC and is proud to provide a cooperative environment where we care for the well-being of our subscribers. After-all, Allband was started to provide 911 services in area that lacked traditional telephones and cellular service and saving lives continues to be the cooperative's number one priority.
7. The following timeline of the cooperative's development demonstrates that Allband has met the regulatory requirements needed to utilize Universal Service Funding, a critical component needed to (a) maintain affordable customer rates and services that are comparable to those provided in urban areas, (b) provide and maintain quality service, and (c) meet its RUS debt obligations associated with the network used to deliver such services:

² For the purposes of this affidavit, an "unserved" area is defined as a geographic region that does not have telephone or broadband services. An "unassigned" area is defined as a geographic area that has never been served by an Incumbent Local Exchange Carrier and is not included in a registered state tariff.

- a. After being denied basic telephone service by GTE at his Curran, MI residence and then left without an alternate solution, now Allband President John Reigle, began coordinating the formation of Allband with Michigan State University in early 2000.
- b. On November 3, 2003, after extensive planning and organizational efforts, Allband filed its Articles of Incorporation with the State of Michigan.
- c. On July 29, 2004, Allband filed a complete loan application with the USDA Rural Development, the only source of financing available to build its new network.
- d. On August 31, 2004, the MPSC in Case No. U-14200³ granted Allband a temporary license to provide service in its Robbs Creek Exchange, an unserved/unassigned geographical location. A permanent license was granted by the MPSC in Case No. U-14200 on December 2, 2004.
- e. Allband obtained RUS funding on Oct. 7, 2004 and began constructing an all fiber, passive optical, state of the art telecommunications network that would allow Allband not only to provide standard telecommunications services, but also ubiquitous access to broadband and other advanced services.
- f. On August 11, 2005, the FCC granted Allband's waiver⁴ of certain FCC's rules and allowed Allband to be treated as an ILEC for NECA pooling and Universal Service purposes.
- g. On August 18, 2005, the USDA Rural Development Program officially announced a loan for \$8 million to fund the construction of Allband's fiber to the home network.⁵
- h. On October 19, 2005, Allband started construction in its Robbs Creek Exchange.
- i. On November 10, 2005, the MPSC in Case No. U-14659⁶ granted Eligible Telecommunications Carrier (ETC) status to Allband.
- j. On November 30, 2006, Allband activated its first cooperative member.
- k. In December 2006, after obtaining the necessary waivers from the FCC, Allband was allowed to join the National Exchange Carrier Association ("NECA") pools as an ILEC. This action allowed Allband to (a) Minimize administrative expenses and (b)

³ See, In the matter of the application of Allband Communications Cooperative for a temporary and permanent license to provide basic local exchange service in the proposed Robbs Creek Exchange, Case No. U-14200, dated December 2, 2004.

⁴ See, In the Matter of Allband Communications Cooperative Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules in WC Docket No. 05-174, released August 11, 2005, (Allband Order).

⁵ USDA Rural Development Loan (RUS) Borrower MI-570-A

⁶ See, In the matter of the application of Allband Communications Cooperative for designation as an eligible telecommunications carrier pursuant to Section 214(e) of the Telecommunications Act of 1996, Case No. 14659, dated November 10, 2005.

Maintain reasonable and stable access rates. Because the Universal Service Administration Company (“USAC”) and NECA recognized Allband as an ILEC per its FCC waivers, NECA began providing Interim Common Line Support and Local Switching Support (two of the FCC’s USF mechanisms) to the cooperative.

1. In January 2008, Allband began receiving High Cost Loop Support (another of the FCC’s USF mechanisms) from USAC/NECA. This support is being used and will be used by Allband to reinvest plant within its Robbs Creek exchange and recover a substantive portion of the ongoing high cost of providing ubiquitous network facilities and thus, enable Allband to maintain reasonable local exchange consumer rate levels (Currently \$19.90 per month plus taxes and regulatory fees).

8. Part 54.302 limiting support to \$3,000 per line annually has the effect of retroactively depriving Allband of Federal USF revenues for recovery of investments already made in its network and associated operating expenses in full reliance upon all existing regulatory requirements and procedures that have been in place since Allband’s formation. If the Allband Board of Directors and management had known that part 54.302 would have been enacted, the formation of Allband to service the Robbs Creek exchange would not have been explored and Allband would have not pursued a loan from the Rural Utility Service to finance the network facilities needed to provide service. One of the effects of this Commission’s proposed rule changes is that Allband will be unable to repay its loan to RUS and it will default on its promissory note with the United States of America.

9. If Part 54.302 rule is not stayed, Allband will be forced to cease operations due to a lack of operating revenue recovery. The direct result will be that lifeline telephone service will no longer be available effective in 2012, after the effective date of the reform changes. Per Allband’s previously submitted waiver request to the FCC, Allband would have to increase its fees for basic local exchange service to \$174.90 per month in 2012 to remain operational. It is clearly unreasonable to expect customers to bear these rate increases and to keep their phone service. In addition to the fact that customers could not afford these rates, such rates would be at odds with the Act’s requirement for affordable rates that are comparable to those charged in urban areas.

10. Allband cannot recover the lost revenues from its switched inter-carrier compensation rates. In its Order, the FCC has capped and is, over a transition period, eliminating most of the switched inter-carrier compensation revenue. As a consequence, Allband will not receive a significant amount of the Federal USF revenue losses from this revenue source. The only inter-carrier compensation rate that was not capped by the Commission is the intrastate originating switched access rate. If Allband tried to recover its Federal USF revenue loss from this revenue source, this rate would have to increase exponentially. An increase is clearly not feasible because Allband would no longer have interexchange carriers willing to serve customers in its service area. Even in the unlikely occurrence that interexchange carriers continue to provide service, when these switched access rate increases are flowed through to increases to customer toll rates, it is quite

likely that all the landline toll customers in Allband's service would disconnect this service.

11. Allband cannot recover the lost Federal USF revenues from Michigan's state fund. Said fund was established by state law and MPSC rule to specifically recover only intrastate access charge reductions adopted in 2010 by the MPSC.

12. Based on analysis of the Commission's April 25, 2012 Order⁷ under Appendix B (Quantile Regression Cost Per Loop)⁸, ILECs who receive more than \$3,000 per loop receive a total of approximately \$104.7 million from the Universal Service Fund. Out of an estimated \$2 billion allocation, ILECs above the cap only utilize 5.24% of the fund. By implementing the \$3,000 cap, the FCC will reduce funding for rural ILECs by approximately \$33.8 million dollars or 1.7%.

Allband currently receives approximately \$8,000 per loop and approximately \$1.3 million in USF support annually. This accounts for 0.06751% of ILEC allocation of the fund. The cap stands to reduce Allband's support by approximately \$861,000 annually, a total fund reduction of 0.04306%, a small amount when compared to the fund as a whole, but a devastating financial loss to Allband.

Allband finds the savings as calculated to be disproportionate to the universal service benefits and community development that has resulted from Allband and other rural ILECs that exceed the \$3,000 cap. Limiting the recovery of funds already invested into communities like Allband's Robbs Creek exchange for such a small reduction in total USF funding is not in the public interest and defeats the central purpose of the fund, to support carriers in high cost areas.

13. Approval by the Commission of the stay is necessary and in the public interest to ensure that consumers in the area served by Allband continue to receive voice service and emergency services.

14. The Allband Board of Directors and Management respectfully request that the Commission recognize the accomplishments Allband has achieved and the benefits it has brought to its community in a relatively short period of time, and that the Commission stay, as applied to Allband, all USF support reductions as presented in the Commission's order and revised rules. This requested Commission action will Allow Allband to continue providing telephone service pursuant to the requirement of the Universal Service Act while the FCC decides on its Waiver request, and is essential to the repayment of its debt obligations to the United States Government.

15. This completes my affidavit.

⁷ See Table 1

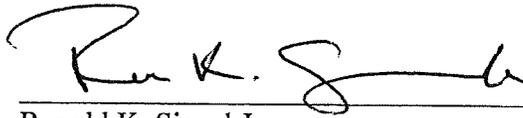
⁸ See in the Matter of Connect America Fund, High-Cost Universal Service Support, WC Docket No. 10-90, WC Docket No. 05-337

TABLE 1

Company	LINES	CPL	CPL TOTAL	\$ SAVED FROM CAP	TOTAL \$ SAVED
Accipiter	520	\$6,707	\$3,487,640	\$3,707	\$1,927,640
Adak	147	\$12,739	\$1,872,633	\$9,739	\$1,431,633
Agate	113	\$4,530	\$511,890	\$1,530	\$172,890
Allband	163	\$8,283	\$1,350,129	\$5,283	\$861,129
Beehive	930	\$3,026	\$2,814,180	\$26	\$24,180
Big Bend	5602	\$3,648	\$20,436,096	\$648	\$3,630,096
Blue Valley	2662	\$3,417	\$9,096,054	\$417	\$1,110,054
Border to Border	96	\$15,868	\$1,523,328	\$12,868	\$1,235,328
Dell	794	\$6,594	\$5,235,636	\$3,594	\$2,853,636
Georgetown	276	\$3,081	\$850,356	\$81	\$22,356
La Harpe	318	\$3,912	\$1,244,016	\$912	\$290,016
Midvale	1226	\$3,118	\$3,822,668	\$118	\$144,668
Mutual	437	\$3,778	\$1,650,986	\$778	\$339,986
Nemont	212	\$3,294	\$698,328	\$294	\$62,328
North State	473	\$4,196	\$1,984,708	\$1,196	\$565,708
Nunn	559	\$3,140	\$1,755,260	\$140	\$78,260
Pine Tel	902	\$4,411	\$3,978,722	\$1,411	\$1,272,722
Rainbow	1692	\$3,021	\$5,111,532	\$21	\$35,532
S. Central	297	\$5,443	\$1,616,571	\$2,443	\$725,571
Sacred Wind	2600	\$3,182	\$8,273,200	\$182	\$473,200
Sandwich Isles	2334	\$9,278	\$21,654,852	\$6,278	\$14,652,852
Skyline	30	\$12,290	\$368,700	\$9,290	\$278,700
South Park	167	\$6,116	\$1,021,372	\$3,116	\$520,372
St. John	587	\$3,411	\$2,002,257	\$411	\$241,257
Summit	252	\$3,906	\$984,312	\$906	\$228,312
Terral	215	\$5,077	\$1,091,555	\$2,077	\$446,555
Westgate	20	\$16,069	\$321,380	\$13,069	\$261,380
Total:	23624		\$104,758,361		\$33,886,361
ILEC POOL:	\$2,000,000,000		PERCENT OF FUND:	5.238%	
			PERCENT OF FUND SAVED:	1.694%	
			ALLBAND % OF FUND:	0.06751%	
			ALLBAND % OF FUND SAVED:	0.04306%	

VERIFICATION

I, Ronald K. Siegel Jr., declare under penalty of perjury that the statements in this Affidavit are true and correct to the best of my knowledge and belief.



Ronald K. Siegel Jr.
General Manager
Allband Communications Cooperative
7251 Cemetery Rd.
Curran, MI 48728

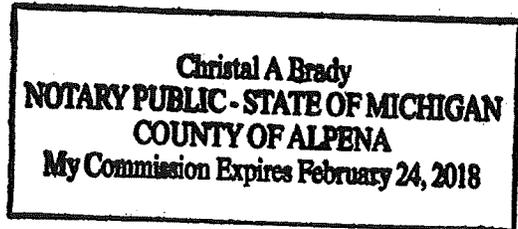
State of Michigan

County of Alpena

Subscriber and sworn before me, this 27th day of June, 2012.

Christal A. Brady Printed Name
Christal A. Brady Notary Public
Alpena County, Michigan

My Commission Expires: 2/24/18
Acting in the County of Alpena



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

In the Matter of)	
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Connect America Fund)	WC Docket No. 10-90
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)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**ATTACHMENT 2 TO
PETITION FOR STAY OF THE
ALLBAND COMMUNICATIONS COOPERATIVE**

**AFFIDAVIT OF JOHN M. REIGLE
PRESIDENT OF ALLBAND COMMUNICATIONS COOPERATIVE**

Dated: June 27, 2012

**Affidavit of John M. Reigle, President
Allband Communications Cooperative**

1. I am John M. Reigle, President and Founder of Allband Communications Co-Operative. For over 10 years I have worked to bring traditional telephone service and broadband to unserved areas of Michigan that have never been served by an Incumbent Local Exchange Carrier (ILEC).

2. The recent Universal Service Fund (USF) and inter-carrier compensation reform implemented by the Federal Communications Commission (FCC) will prevent Allband from receiving funds needed to ensure that people in Allband's Robbs Creek exchange and other un-served areas of Michigan receive dependable 911, traditional telephone and broadband services. The following information will shed further light on how the order will jeopardize the safety and success of our community:
 - a. Shortly after moving to Curran Michigan, I contracted with GTE for phone service. Shortly after, Verizon acquired GTE and told me that they would not, under any circumstances, bring phone service to my home because I lived in an unserved/unassigned area.

 - b. I contacted the Michigan Public Service Commission (MPSC) and filed a complaint regarding Verizon's decision. MPSC representative, Ron Choura, informed me that the State had never forced a phone company to serve any of the unassigned areas of Michigan. The MPSC staffer told me that if I wanted phone service, I "should start my own company", clearly startling advice coming from an agency that regulates phone companies and is expected to work with the best interest of the taxpayer in mind.

 - c. For many years I worked with Michigan State University to develop a business plan that could be presented to the USDA Rural Utility Service (RUS) for an infrastructure loan to build phone service in these areas.

 - d. Allband is licensed by the State of Michigan, has received waivers from the FCC, and has received payments from NECA and the USF fund for many years to recover the high cost of our operations.

 - e. Allband was created to serve an area that was shunned by existing phone companies due to a lack of return on investment. No other telephone service solutions were available to our community and we explored all other options before starting our own cooperative and requesting USF support.

 - f. Per the Telecommunications Act of 1996, the FCC's mission is to enforce the act and ensure that every citizen has access to affordable telephone and dependable 911 services. Rather than creating unnecessary funding barriers

for companies like Allband who actually use a very small portion of the fund's budget, the FCC should recognize that companies like Allband need financial support through Federal USF funds to serve high cost exchanges and current un-served areas in order to meet the goals of the Universal Service Fund. Funding caps as imposed in the FCC order are not adequate to serve the needs of rural carriers who operate in rural high-cost locations, nor is it enough to support investment in areas that to this day do not have traditional telephone service.

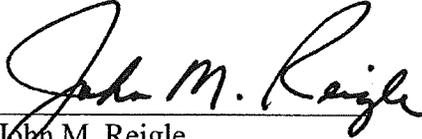
- g. If a stay is not granted, it is not a matter of if we go out of business; it's a matter of when. Allband offers service to everyone who wants service in our area and we have no way of increasing the population base needed to increase revenue. If Allband is not granted a stay from the FCC's high cost loop cap, Allband will not survive the year, will default on it's RUS loan and the cooperative will have to close its doors; a large setback for a now successful rural community.
- h. The FCC's order is jeopardizing Allband's ability to continue providing reliable service. Wireless does not work in areas that are as heavily forested as our area is. The only reliable service is provided by Allband's network.
- i. Allband jumped through multiple hoops for many years to become an ILEC (and was supported in this process by the FCC) so that Allband would be eligible for USF support. In fact, Allband built an entire 20-year business plan around the foundation and rules of the USF fund, a fact presented to the FCC during its ILEC waiver request process. We have met all the requirements and implemented all of the deliverables ordered by our government; we can do no better.
- j. Allband's RUS loan was dependent on receiving USF support. By removing our funding, our business model and ability to pay back our loans will be significantly harmed. To date, neither the FCC nor RUS has publicly addressed how USF reform will affect RUS rural development loan security, other than an unproven waiver process.
- k. Allband offers the most reliable form of telephone and high-speed broadband available. We are more reliable than wireless and use a better technology for offering education, health care, security, and emergency services.
- l. Allband has received recognition for its efforts from local and state government offices, and from the USDA Rural Development offices for its efforts to service rural low income, high unemployment areas.

- m. We have expanded educational opportunities and developed more economic stimulus and new jobs in this community than anyone else in the last 50 years. Allband has been a terrific investment in this community and for that matter, this country, and it has the potential to better itself if given the support it deserves from the USF.
 - n. Allband has survived during the economic meltdown that this country has had and is experiencing. The idea that our greatest threat is our own government is very disturbing. We were able to obtain bridge loan financing, lease equipment, and facilities based on the USF support mechanisms that are in place. We have no collateral and we cannot borrow money from anyone else due to RUS rules and liens.
 - o. Allband has entered into several long-term leases and contracts based on the USF support mechanisms that were established. Allband was given no forewarning that this reform would happen when we approached business partners to invest in our community and now the economic stability of said partners are also threatened by the FCC's order.
 - p. Another troubling fact is the United States Postal Service has closed our post office and there will be no other form of traditional postal communication. The pay phones at public premises in our area have been removed from every location. There is no city center in our community or central place at which people meet. Allband serves four counties that rely heavily on our services for emergency services, lifeline and access to the outside world.
3. Allband, and the purpose it serves, is the reason the USF was originally established. The FCC's actions to correct the size of the ballooning Universal Service Fund is being forced onto Allband, one of the few companies who have proven that its use of the fund is actually meeting the goals of the Act responsibly. I urge the FCC staff to take whatever action necessary to prevent the destruction of over five years of successful community development and universal service.

STATE OF MICHIGAN)
)
COUNTY OF ALCONA)

VERIFICATION

I John M. Reigle, being duly sworn upon his oath deposes that the statements contained herein are true and correct to the best of his knowledge, information and belief.



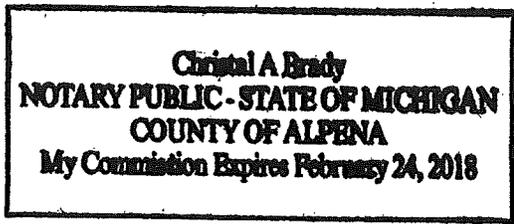
John M. Reigle
President
Allband Communications Cooperative

Subscribed and sworn to before me
this 26th day of June 2012.



Cristal A. Brady, Notary Public

State of Michigan, County of: Alpena
My Commission Expires: 2/24/18



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

In the Matter of)	
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Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Line-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**ATTACHMENT 3 TO
PETITION FOR STAY OF THE
ALLBAND COMMUNICATIONS COOPERATIVE

AFFIDAVIT OF PAUL L. COOPER, PRESIDENT OF
FRED WILLIAMSON & ASSOCIATES, INC.**

Dated: June 27, 2012

Affidavit of Paul L. Cooper

A. Background

1. I am Paul L. Cooper, President of Fred Williamson & Associates, Inc. I have worked in the Telecommunications Industry for over 42 years. During that time, I have dealt with and implemented Commission (Federal & State) rules & regulations governing local telecommunications carrier rates, costs, universal service and compensation between carriers for the use of each other's networks.
2. For decades, small, rural telecommunications carriers, now known as rural Incumbent Local Exchange Carriers (ILECs) have formed telephone companies (generally cooperatives and private family owned companies) to serve high-cost, sparsely populated communities and rural areas that larger carriers would not serve.
3. In 1996, Congress passed an amendment to the Communications' Act.¹ One of the primary purposes of the Act was to establish a Federal Universal Service Fund (USF).² The Act required the Federal Communication Commission (Commission) to:
 "...base policies for the preservation and advancement of universal service on the following principles:
 (1) QUALITY AND RATES – Quality services should be available at just, reasonable and affordable rates.
 (2) ACCESS TO ADVANCED SERVICES – Access to advanced telecommunications and information services should be provided in all regions of the Nation.
 (3) ACCESS IN RURAL AND HIGH COST AREAS – Consumers in all regions of the Nation...should have access to ...services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."³
The Act also required the Commission to provide specific, predictable and sufficient Federal support.⁴
4. There are still areas of the United States that have no telecommunications service (unserved areas). Although not a common occurrence, subsequent to the 1996 Act, the Commission has recognized as ILECs a number of carriers that were formed to serve areas unserved by any telecommunications provider. Allband was formed in late 2003 as a non-profit member cooperative to serve a remote and unserved area located in the lower peninsula of Michigan. The Michigan Public Service Commission (MPSC) licensed Allband to provide service in 2004⁵ and the Commission under its authority recognized Allband as an ILEC and allowed it to

¹ Communications Act of 1934 as amended by the Telecommunications Act of 1996 (Act).

² Act, Section 254.

³ Act, Section 254(b)(1) to (3).

⁴ Act, Section 254(b)(5).

⁵ The MPSC granted Allband a temporary license to serve customers within a designated service area boundary on August 31, 2004 and granted a permanent license on December 2, 2004, in Case No. U-14200.

be a member of the National Exchange Carrier Association (NECA) and to participate in the NECA intercarrier compensation tariffs and pools and to receive Federal USF revenues as an ILEC.⁶

5. Service was not provided in the area now served by Allband because it is remote and difficult to serve with few customers.⁷ No other service provider was willing to incur the very high costs per-customer to provide service. In 2005, when the Commission allowed Allband to receive Federal USF revenues, it was clear that this was a costly undertaking and that a significant level of Federal USF revenue per-line would be required to maintain affordable customer rate levels while deploying the facilities necessary to provide service. The Commission stated in its Order approving Allband's waivers that:

“Based on the record, we find that all of these waivers are in the public interest because they will facilitate the ability of Allband to serve previously unserved areas.”⁸

6. Relying on the revenues provided by the Federal USF, the Rural Utilities Service (RUS) provided loans to Allband totaling approximately \$8 million to purchase and construct facilities to provide service in the unserved area. Federal USF revenues constitute 84 percent of Allband's total regulated and non-regulated revenues.⁹ As a very significant portion of Allband's revenues associated with delivering service in this remote, high-cost area, the Federal USF revenues would, together with Allband's other revenues, enable Allband to service its debt obligations to RUS. If Allband were to suffer a shortfall in the realization of the Federal USF revenues as ordered by the Commission (the Commission's \$3000 per line annual cap would reduce Allband's revenues by 55 percent), Allband would be unable to meet its loan obligations to the RUS.
7. Allband has, since 2005, deployed a network financed using RUS loans, designed to RUS specifications and requirements, to serve the customers in its service area. The current sufficient and predictable level of Federal USF revenues are an essential and critical component to (a) maintaining affordable customer rates and services that are comparable to those provided in urban areas, (b) providing and maintaining quality service, and (c) meeting its debt obligations associated with the network used to deliver such services.
8. At odds with the Commission's prior support for Allband's provision of service to customers in an unserved area by allowing Allband to receive sufficient universal

⁶ See Order, In the Matter of Allband Communications Cooperative Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules in WC Docket No. 05-174, released August 11, 2005 (Allband Order).

⁷ Allband currently serves 163 lines and has a customer density of 1.09 per square mile.

⁸ Allband Order, paragraph 1.

⁹ Non-regulated revenues are for services that utilize Allband's loop facilities.

service funding, the Commission's recent Order¹⁰ enacted a rule that will deprive Allband of the majority of these Federal USF revenues.

B. Rule Limiting Support to \$3000 per-line Annually (\$250 per-month)

9. In the Order, the Commission adopts a rule¹¹ limiting federal USF revenues to \$3000 per-line annually or \$250 per-line per-month:

“274. Discussion. After consideration of the record, we find it appropriate to implement responsible fiscal limits on universal service support by immediately imposing a presumptive per-line cap on universal service support for all carriers, regardless of whether they are incumbents or competitive ETCs. For administrative reasons, we find that the cap shall be implemented based on a \$250 per-line monthly basis rather than a \$3,000 per-line annual basis because USAC disburses support on a monthly basis, not on an annual basis. We find that support drawn from limited public funds in excess of \$250 per-line monthly (not including any new CAF support resulting from ICC reform) should not be provided without further justification.

275. This rule change will be phased in over three years to ease the potential impact of this transition. From July 1, 2012 through June 30, 2013, carriers shall receive no more than \$250 per-line monthly plus two-thirds of the difference between their uncapped per-line amount and \$250. From July 1, 2013 through June 30, 2014, carriers shall receive no more than \$250 per-line monthly plus one-third of the difference between their uncapped per-line amount and \$250. July 1, 2014, carriers shall receive no more than \$250 per-line monthly.”¹²

This rule has the effect of retroactively depriving Allband of Federal USF revenues for recovery of investments already made in its network and associated operating expenses. Had Allband known that this rule limiting its Federal USF revenues would be enacted, it would not have (and could not have) undertaken forming the ILEC to provide service to customers in this unserved area, and Allband could not have obtained loans from RUS (that rely in significant part on these revenues for repayment) to finance the network facilities necessary to provide service.

¹⁰ In the Matter of 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 an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund in Dockets WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109 and WT Docket No. 10-208, Report and Order Adopted on October 27, 2011 and Released on November 18, 2011. (Order). Published in the Federal Register/ Vol. 76. No. 229/ Tuesday, November 29, 2011/ Rules and Regulations.

¹¹ Order, Appendix A, Final Rules, Section 54.302.

¹² Order, paragraphs 274 and 275, footnotes deleted.

10. Absent the Commission rule change, Allband would receive an estimated \$8,569 per line in 2012 in Federal USF revenues or \$714 per-line per-month.¹³ The effect of the Commission’s annual \$3000 per-line limit on Allband is to reduce its Federal USF revenues by:

- July 1, 2012 - \$1,856 per-line annually (\$155 per-line per-month) or approximately a 18% total revenue reduction.
- July 1, 2013 - \$3,713 per-line annually (\$309 per-line per-month) or approximately a 37% total revenue reduction.
- July 1, 2014 - \$5,569 per-line annually (\$464 per-line per-month) or approximately a 55% total revenue reduction.
- Thereafter – Approximately a 55% total revenue reduction.

The RUS loan covenant with Allband requires that Allband have sufficient revenues to at least pay the interest on the RUS loans.¹⁴ The effect of the proposed rule change is that Allband will be unable to pay the entire annual RUS loan payment of \$638,147, of which \$324,913 is interest, annual loan interest, even in the first year of the phase in of the rule when the annual revenue reduction is \$302,576.¹⁵

11. To operate its telecommunications network, provide service and repay its loans, Allband only has the following sources of revenue in 2012 for its regulated and non-regulated telecommunications operations:

	Estimated Annual Revenue	Percent of Total
A. Revenues from local customer rates	\$34,593	2.1%
B. Inter-carrier compensation revenues ¹⁶	\$146,668	8.9%

¹³ Federal USF amounts from the Universal Service Administrative Company High Cost Support Report, Appendix HC01-1Q2012. Allband support for the quarter shown is \$349,182. The annual estimate of Federal USF revenues would be \$349,182 times 4 quarters or \$1,396,728. The annual support per-line would be \$1,396,728 divided by 163 Allband lines in service or \$8,569.

¹⁴ October 19, 2005 Loan Agreement between Allband Communications Cooperative and the United States of America – Section 5.12 Tier Requirement:

“From the date of this Agreement until the date specified in Schedule 1, the Borrower will maintain a TIER of at least 1.0. Thereafter, starting on the date specified in Schedule 1... the Borrower shall maintain the TIER level(s) as specified in Schedule 1.”

The ability to pay interest on a RUS loan is measured by a Times Interest Earned (TIER) ratio by RUS. A ratio below one means that a company has insufficient net income to pay the loan interest. The Section 54.302 rule change drops Allband’s TIER ratio from a positive 1.2 to a negative 1.7.

¹⁵ Allband’s 2012 annual RUS loan payment is \$638,147 of which \$324,913 is interest. The loss of Federal USF support in the first year of the phase in of the rule (July 1, 2012) is \$302,576 (\$1,856/line). This loss grows to \$605,152 (3,713/line) on July 1, 2013 and \$907,728 (\$5,569/line) on July 1, 2014. It is clear that Allband would not have sufficient income to enable full payment of the RUS loan even in the first year of the phase in of the rule.

¹⁶ Revenues collected from other carriers for the use of Allband's network. This also includes \$6,061 of revenues associated with the MPSC State Fund. The MPSC established a state fund to replace revenues

C. Miscellaneous Revenues	\$1,792	0.1%
D. Federal USF revenues	\$1,396,728	84.3%
E. Non-regulated revenues	<u>\$76,215</u>	<u>4.6%</u>
F. Total	\$1,655,995	100.0%

The revenues lost by Allband as a result of the Commission’s rule change to cap support at \$3,000 annually (\$907,728 or \$5,569 per-line) are approximately 55% of its total regulated plus non-regulated revenues.

12. This revenue loss cannot be made up through rate increases to local Allband customers. Allband’s basic consumer rate is \$19.90 per month. This rate reasonably comparable to urban rates and affordable as required by the Federal Act, Section 254(b)(1) and (3). This rate is well above the benchmark affordable rate levels that the Commission establishes in the Order¹⁷. Allband cannot recover the Federal USF revenues lost as a result of the Order from its customers without losing its entire customer base. If Allband increased local customer rates to compensate for the Federal USF revenues lost as a result of the ordered \$3,000 per line annual cap, the effect would be an unaffordable and unreasonable increase in those customer rates. During the phase in and beyond, the monthly rate increase and total monthly rate would be:

	<u>Basic Rate</u>	<u>Rate Increase¹⁸</u>	<u>Total Rate</u>
• July 1, 2012	\$19.90	\$155.00	\$174.90
• July 1, 2013	\$174.90	\$155.00	\$329.90
• July 1, 2014	\$329.90	\$155.00	\$484.90

lost when it lowered intrastate access rate levels - Opinion and Order, In the Matter, on the Commission’s own motion, to implement 2009 PA 182, MCL 484.2310, in Case No. U-16183 dated August 10th 2010.

¹⁷ Order, paragraphs 234 to 247. Specifically see paragraphs (footnotes deleted):

“238. Based on the foregoing, and as described below, we will limit high-cost support where local end-user rates plus state regulated fees (specifically, state SLCs, state universal service fees, and mandatory extended area service charges) do not meet an urban rate floor representing the national average of local rates plus such state regulated fees....”

243. In addition, because we anticipate that the rate floor for the third year will be set at a figure close to the sum of \$15.62 plus state regulated fees, we are confident that \$10 and \$14 are conservative levels for the rate floors for the first two years. \$15.62 was the average monthly charge for flat-rate service in 2008, the most recent year for which data was available. Under our definition of “reasonably comparable,” rural rates are reasonably comparable to urban rates under section 254(b) if they fall within a reasonable range above the national average....”

¹⁸ Each year’s annual per line reduction of \$1,856 per line divided by 12 months to give a monthly reduction per line. For example the yearly Federal USF revenue reduction for Allband is \$1,856. The monthly reduction in Federal USF revenues is \$1,856 divided by 12 or \$155 per line per month.

It is clearly unreasonable to expect customers to bear these rate increases and to keep their phone service. In addition to the fact that customers could not afford these rates, these rates would be at odds with the Act's requirement for affordable rates that are comparable to those charged in urban areas.

13. Similarly, Allband cannot recover the lost revenues from its switched intercarrier compensation rates. In its Order, the Commission has capped and is, over a transition, eliminating most of the intercarrier compensation revenue.¹⁹ As a consequence, Allband may not recover any significant amount of the Federal USF revenue losses from this revenue source. The only intercarrier compensation rate that was not capped by the Commission is the intrastate originating switched access rate. If Allband tried to recover its Federal USF revenue loss from this revenue source, this rate would have to increase exponentially. An increase is clearly not feasible because Allband would no longer have interexchange carriers willing to serve customers in its service area. Even in the unlikely event that interexchange carriers continued to provide service, when these switched access rate increases are flowed through to customer toll rates²⁰, it is quite likely that all the landline customers in Allband's service area would disconnect this service.
14. Finally, Allband cannot recover the lost Federal USF revenues from the Michigan state universal service fund. That fund was established by state law²¹ and MPSC rule²² to specifically recover only intrastate access charge reductions adopted in 2010 by the MPSC.
15. As Numbers 11 to 14 above show, there is no revenue source, other than the Federal USF where Allband may recover the revenues the Commission will eliminate (\$5,569 annually per-line) as a result of its new Section 54.302 rule.

C. Commission Waiver Process

16. The Commission did provide for a waiver process²³ to allow affected ILECs to justify the level of funding they need:

¹⁹ Order, Appendix A – Final Rules:

- Most Intercarrier compensation rates capped – Section 51.909(a)(1) and (2)
- Most Intercarrier compensation rates transitioned to a zero rate level – Section 51.909(b) to (j)
- Revenue replacement for revenues lost when Intercarrier compensation rates are reduced to zero, transitioned out at 5% per year – Section 51.917(b)(2)

²⁰ This increase would violate the Section 254 provisions of the Act because Allband's rates would be substantially higher than comparable rates in urban areas.

²¹ Michigan House Bill 4257 passed in 2009.

²² Opinion and Order, In the Matter, on the Commission's own motion, to implement 2009 PA 182, MCL 484.2310, in Case No. U-16183 dated August 10th 2010.

²³ Order, paragraphs 539 to 544.

“278. We also recognize that there may be legitimate reasons why certain companies have extremely high support amounts per line.... Therefore ...we will consider individual circumstances when applying the \$250 per-line monthly cap. Any carrier affected by the \$250 per-line monthly cap may file a petition for waiver or adjustment of the cap that would include additional financial data, information, and justification for support in excess of the cap using the process we set forth below. We do not anticipate granting any waivers of undefined duration, but rather would expect carriers to periodically re-validate any need for support above the cap. We also note that even if a carrier can demonstrate the need for funding above the \$250 per-line monthly cap, they are only entitled to the amount above the cap they can show is necessary, not the amount they were previously receiving.”²⁴

Even though Allband has justified its level of Federal USF revenues (Allband has adhered to and followed the Commission’s Part 32, 36,54 and 69 cost rules) every year it has received that funding, Allband has filed a petition for a waiver with the Commission with a complete earnings analysis that demonstrates that the funding it now receives is necessary to satisfy the Act’s Section 254 requirements and to service the debt it assumed to deploy facilities to serve customers in its service area and to maintain its network.²⁵ In addition to the earnings review, Allband’s waiver filing contained all of the information the Commission required in its Order.²⁶ However, there is no assurance that this waiver process will be completed by the July 1, 2012 date when the Commission will begin reducing Allband’s Federal USF revenues. There is no date when the Commission must complete the Allband waiver review and issue an order. Considering the significant amount of data that the Commission is requiring and must review, Allband is very concerned that the Commission will not complete the waiver process before July 1, 2012 implementation date of the rule limiting Allband’s Federal USF support.

17. Even if the Commission does complete the waiver review before the July 1, 2012 implementation date of the rule, there likely will be insufficient time for Allband to seek remedies (Commission Reconsideration or Court appeal) before the July 1, 2012 implementation date of the rule limiting Allband’s Federal USF support.

²⁴ Order, paragraph 278 (footnotes deleted).

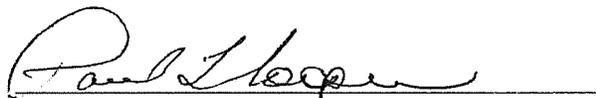
²⁵ Petition of Allband Communications Cooperative for Waiver of Part 54.302 and the Framework to Limit Reimbursable Capital and Operating Costs, filed on February 3, 2012.

²⁶ Order, paragraphs 539 to 544.

STATE OF MISSOURI)
)
COUNTY OF ST LOUIS)

Verification

Paul L. Cooper, being duly sworn upon his Oath deposes that the statements contained herein are true and correct to the best of his knowledge, information and belief.



Paul L. Cooper
President
Fred Williamson & Associates, Inc.

Subscribed and sworn to before me this 26 day of June, 2012.


Notary Public

My commission expires: 9-7-14

