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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
	)	
Petition of Border to Border Communications, Inc.	)	
For Waiver of Section 54.302 and the Framework	)	
To Limit Reimbursable Capital and Operating	)	
Expenses for the Purpose of Determining High	)	
High Cost Support	)	

PETITION OF BORDER TO BORDER COMMUNICATIONS, INC.

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June 29, 2012

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SUMMARY

In the mid-1990s, the residents and businesses of a small remote area of southern Texas along the Mexican Border were offered telephone service for the first time. Although telephone service had been available in other areas of the country for well over a hundred years and universal service had been national policy for over 60 years, no telephone company had previously sought to serve this population. The owners of Border to Border Communications however determined that service was financially feasible if a carrier would take advantage of the capital funding available from the United States Department of Agriculture's Rural Utilities Service and revenues streams provided by intercarrier compensation and the federal and state universal service funds.

Consistent with the express purposes of the Communications Act and the Rural Electrification Act, Border to Border commenced construction and operation of a system that now offers both voice and broadband to all of the widely scattered residences and business in the 760 square mile area. All construction plans and expenditures were reviewed and approved by the expert staff of RUS as being technically and operationally prudent. The (then) Common Carrier Bureau in 1995 recognized that USF support was critical to the ability to continue service in the area and waived the two year lag for support receipt.

Near the end of last year the Commission adopted new rules with the laudable objective of achieving ubiquitous broadband deployment throughout the country, while preserving access to voice service and minimizing the contribution burden on consumers. To fund this expansion of broadband the Commission adopted several rules with the again laudable goals of ensuring that existing carriers had incentives to operate efficiently and were not overcompensated. Unfortunately, two of the rules will, unless waived, most certainly result in the demise of Border to

Border after barely 20 years of operation. By 2015 Border to Border will be in a negative cash position and be unable to make the payments required by its loan from the U.S. Government. Given the more than 100 years the area was ignored by the telephone industry and the spotty availability of mobile service, the elimination of Border to Border as an operating telephone company will have severe negative consequences for its subscribers. Such a result would be directly contrary to the express Congressional purpose of the Universal Service provision of the Act and the goals enunciated by the Commission in adopting its rules.

Border to Border therefore respectfully requests that the Commission waive the $250 per line per month limitation on USF recovery and the limitation on capital and operational cost recovery in the Benchmark mechanism. Border has attempted to provide all of the information specified in the Commission's order as required for consideration of such waiver requests, and stands ready to provide such additional information as the Commission may require.

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PETITION OF BORDER TO BORDER COMMUNICATIONS, INC.

I. INTRODUCTION

Border to Border Communications, Inc. ("Border"), pursuant to Section 1.3 of the Commission's rules, respectfully petitions the Commission for a waiver of this Commission's Report and Order and Further Notice of Proposed Rulemaking of the Federal Communications Commission ("Order"), effective November 18, 2011, as noticed in the Federal Register on November 29, 2011.[1] In this waiver request Border requests the following relief:

1. That the Commission waive the implementation of the Part 54.302 rule for Border;

2. That the Commission waive the Framework to Limit Reimbursable Capital and Operating Costs.

[1] For the purposes of this Petition Border assumes the legal validity of the Order, the rules adopted thereunder, subsequent Orders, Clarifications and Reconsiderations by the Commission as well as implementation decisions of the Wireline Competition Bureau all as of the date of this Petition. Border reserves the right to raise the legality of any such Orders, rules or decisions in the future.

Border will demonstrate below that in accordance the Communications Act, the Administrative Procedure Act, relevant court and Commission precedents and the standards established in the Order, special circumstances warrant a deviation from the rules and that such deviation will serve the public interest. Absent grant of the above waivers the implementation of the section 54.302 rule and/or the Framework to Limit Reimbursable Capital and Operating Costs will irreparably and immediately harm Border, its customers, and the security interest of the Rural Utilities Service by providing insufficient revenues to:

- Continue providing voice, including 911 services, to any of its customers
- Pay the principal and interest on its RUS loans
- Continue provision of Broadband services that are not available to subscribers from any other provider.

Border respectfully requests that the Commission promptly review and approve this waiver request in its entirety

II. HISTORY AND BACKGROUND OF BORDER

Prior to 1994, the area of south Texas now served by Border was devoid of any telecommunication services. At that time period, Southwestern Bell Telephone Company (SBC), now AT&T of Texas, served a few communities, within Zapata County but left a 760 square mile area of Zapata County and a portion of Webb County unserved.

Border was formed in 1991 to serve the remote and unserved areas of Zapata County and an adjacent portion of Webb County located in the lower Texas Rio Grande Valley.. The Public Utility Commission of Texas ("PUCT") licensed Border to provide service in August of 1991 and service commenced in April 1994.[2] In May 1995, the Common Carrier Bureau waived Sections 36.611 and 612 of the rules to permit Border to begin receiving Universal Service Support at that time rather than wait the full two years the rules would otherwise require.[3]

Service was not previously provided in the area now served by Border because it is remote

2 The PUCT granted Border a Certificate of Convenience and Necessity to serve customers within a designated service area boundary on August 1, 1991 in Docket No.9588.

3 Memorandum Opinion and Order, Border to Border Communications, Inc. Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules, 10 FCC Rcd 5055 (Com. Car. Bur. 1995) ("Border Waiver Order").

and expensive to serve with few potential customers.[4] The 1995 waiver recognized that given Border's high costs per access line, without immediate USF support customer rates could become unfavorable or Border might terminate service by the end of the year. The Bureau stated: "The likelihood of such an outcome cannot be readily dismissed, particularly when we consider the high average costs demonstrated by [Border]." It therefore found that neither alternative would serve the Commission's goal of promoting affordable service and would disserve the public interest.[5]

Beginning in 1993 Border has constructed a state-of-the-art network throughout its service area with capital financing provided by loans from the Rural Utilities Service (RUS). The initial loan which helped Border start-up was for $1,848,000.00 of which, as May 31, 2012, $256,958 is outstanding. This loan is scheduled to be paid off in March of 2014. The network was upgraded in 2003 utilizing another RUS loan. As of 5/31/12 the outstanding amount for this loan is $4,143,377, and its pay off date is November 2023. In 2009 Border returned a Rural Telephone Bank loan authorization of $1,549,800 to RUS since it was unnecessary for the upgrade. Projected and received Federal USF revenues constitute a major factor in RUS's determination that the loans meet its criteria for financial feasibility.

The current level of Federal USF revenues are essential and critical to (a) maintaining affordable customer service rates and services that are comparable to those provided in urban areas, (b) providing and maintaining reliable and quality service, and (c) meeting its debt obligations associated with the network used to deliver such services.

III. THE NEED FOR THE WAIVER

In the Order the Commission has adopted a rule and a framework which will substantially reduce the level of Federal USF revenues that Border has available to (a) maintain and operate its telecommunications broadband network, (b) provide Voice, Internet and Emergency (911) service to its customers, and (c) make principal and interest payments on its RUS loans. The attached financial statements demonstrate that this reduction will preclude Border from continuing to provide either supported voice service or broadband Internet access, much less upgrade broadband service

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4 Border currently serves 76 Access Lines and has an access line density of <u>0.100</u> lines per square mile.

5 *Border Waiver Order* at 5057.

to meet the standards adopted in the Order. Further Border will be in default on its loan covenants and will be unable to recover investments already made in its network and associated ongoing operating expenses. Such a result would be contrary to the express goal of ubiquitous broadband of Congress, the President and the Commission.

A. Rule Limiting Support to $250 per line per month

The Order adopted section 54.302 which limits federal USF support to $3000 per-line annually or $250 per-line per-month. The effect of this limit will be to reduce Border's USF revenue by increasing amounts, reaching $1,031,838 in 2015. Had Border known in 1993 that this rule would be adopted it would not have (and could not have) undertaken forming the ILEC to provide service to customers in this unserved area. The Bureau's 1995 waiver explicitly recognized that Border incurs exceptionally high costs and that service could not be provided at reasonable rates without USF support.[6] Had the $3000 per line per year rule been then in effect, Border could not have obtained loans from RUS for either its initial deployment or subsequent upgrade. Border's inability to continue operations necessarily means that there will also be no further expansion of fixed broadband service in the area.

B. Benchmark Limitation on Reimbursable Capital and Operating Costs

In addition to the loss of support resulting from application of section 54.302, Border will suffer further substantial reductions in USF support as a result of what the Commission referred to in the Order as: "a framework for ensuring that companies do not receive more support than necessary to serve their communities. The framework consists of benchmarks for prudent levels of capital and operating costs."[7] On April 25, 2012, the Wireline Competition Bureau ("WCB") released an order adopting the specific methodology for establishing the benchmarks for high cost loop support ("HCLS").[8] The benchmarks adopted further reduce Border's USF revenues by $4,788 per loop or $450,113 per year by 2015

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[6] Border Waiver at para.14.

[7] Order at para. 210.

[8] Connect America Fund, High-Cost Universal Service Support, WC Doc. Nos. 10-90, 05-337, Order, DA 12-646, (WCB 2012) ("Benchmark Order").

C. The USF Limits will irreparably harm Border's Ability to Provide Universal Service to Customers

Absent the FCC rule changes, Border would receive an estimated $17,040 per line in 2012 in Federal USF revenues or $1,420 per-line per-month.[9] The annual effect of the new limits on Capital and Operating Costs and the $250 per line monthly cap to Border will be:[10]

- Year 2012 -$229,205
- Year 2013 -$722,773
- Year 2014 -$1,240,448
- Year 2015 -$1,481,951
- Year 2016 -$1,380,255

Border does not have alternative sources of revenue sufficient to allow it to continue operations after loss of the USF support. To operate its telecommunications network, provide service and repay its loans, Border would have the following sources of revenue in 2012 for its telecommunications operations before consideration of the impacts of the Order:

	Estimated Annual Revenue		Percent of Total
A. Revenues from local customer rates	$	37,292	1.31%
B. Intercarrier compensation revenues[11]	$	994,304	35.07%
C. Miscellaneous revenues	$	8,121	.29%
D. Federal USF revenues	$	1,753,479	61.85%
E. Non-regulated revenues	$	41,985	1.48%
F. Total	$	2,835,181	100.0%

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[9] Universal Service Administrative Company High Cost Support Report, Appendix HC01-1Q2012. Border support for the 1st quarter 2012 shown on HC01-1Q2012 is $408,948. This $408,948 annualized would be $1,635,792 divided by Border's category 1.3 loops in service at 12/31/10 results in $17,040 in Federal universal service support per line in 2012.

[10] See Exhibit 9.

[11] Revenues collected from other carriers for the use of Border's network. This also includes $284,225 of revenue associated with the PUCT State Fund. The PUCT established a state fund to replace revenues lost when it lowered intrastate access rate levels. Texas PUC Docket 18516, January 13, 2000, in accordance with the Texas Public Utility Regulatory Act, TEX. Util. Code Ann §§11.001-64.158, Texas PUC substantive rules, in particular P.U.C. Subst. R. 26.404, and the Telecommunications Act of 1996 §254(b)(3).

The revenues lost by Border as a result of the FCC's rule changes to limit capital and operating costs and to cap support at $250 per line monthly are projected to be $229,205 in year 2012 to as much as $1,481,951 in 2015 as shown above. This revenue loss cannot be made up through rate increases to local Border customers. Border's basic consumer rates are $41.80 for a business line and $20.90 for a residential line, per month, excluding taxes and fees. These rates, for the most part, exceed those experienced in urban areas. These rates are well above the benchmark affordable rate levels established in the Order. If Border were to increase local customer rates to compensate for the Federal USF revenues lost, the effect would be an unaffordable and unreasonable increase in those customer rates. During the phase in alone, the monthly rate increase and total monthly rate would be:

	Monthy Basic Rate[12]	Monthly Rate Increase[13]	Total Monthly Rate
July 1, 2012	$ 29.97	$ 230.13	$ 260.09
July 1, 2013	$ 260.09	$ 725.68	$ 985.77
July 1, 2014	$ 985.77	$ 1,245.43	$ 2,231.20

It is clearly unreasonable to expect customers to bear these rates 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. Border may, in any event, be unable to cost justify such local rate increases, because although the benchmark limits preclude recovery of costs, if the expense adjustment determined by Section 36.631 remains in the interstate jurisdiction it could not be used in a state rate case.

Similarly, Border cannot recover the lost revenues from its switched intercarrier compensation rates. In its Order, the FCC has capped and is, over a period of transition, eliminating

[12] Base rate shown for 2012 is composite rate of Business and Residential customers using Business rate of $41.80 and Residential rate of $20.90 which were B1 and R1 rates at July 1, 2012.

[13] Each year's annual per line reduction divided by 12 months to give a monthly reduction per line. For example the 2012 Federal USF revenue reduction for Border is $229,205. The monthly per line reduction in Federal USF revenues is $230.13 ($229,205 divided by 12 months divided by 83 customers).

most of the switched intercarrier compensation revenue.[14] As a consequence, Border may not recover any significant amount of the Federal USF revenue losses from switched intercarrier compensation. The only intercarrier compensation rate that was not capped by the Commission is the intrastate originating switched access rate. If Border 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 Border would no longer have interexchange carriers willing to serve customers in its service area. Even in the unlikely occurrence that interexchange carriers continued to provide service, if these switched access rate increases were flowed through to increases to customer toll rates, it is quite likely that all the landline toll customers in Border's service area would disconnect this service.

Border cannot recover the lost Federal USF revenues from the Texas State Universal Service Fund. That fund was established by state law[15] and PUCT rule[16] to specifically recover only intra-state access charge reductions adopted in 2000 by the PUCT. Border has a small amount of non-regulated revenue and therefore cannot make up for the Federal USF revenue loss from this source.

D. Border will default on its RUS loans.

Border will have insufficient revenues to pay the principle on it RUS loans. The company will be forced into default. Ultimately, Border will not remain in operation and will be unable to provide telecommunications services to its customers. The RUS loan covenant with Border requires that Border have sufficient revenues to at least pay the interest on the RUS loans.[17] The

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[14] Order, Appendix A - Final Rules:

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

[15] Texas Public Utility Regulatory Act, TEX. Util. Code Ann §§11.001-64.158

[16] Texas PUC substantive rules, in particular P.U.C. Subst. R. 26.404.

[17] November 3, 2003 Amendment to the Telephone Loan Contract between Border to Border Communications, the United States of America, and the Rural Utility Service. Paragraph 2.8 (a) iii of the contract calls for implementation of a tariff that "is designed to produce net income or margins, before interest, but after taxes, in such amounts that when divided by the amount of interest requirements on all of the Borrower's outstanding and proposed loans, produces a ratio of at least 1.0". Paragraph (b) increased that ratio to 1.48 effective after December 31, 2006.

effect of the proposed rule change is that Border will be unable to pay their annual RUS loan payment by year 2015 as shown on Exhibit 8.

E. Response to the Specific Requirements in the Commission's Order for information relevant to Waiver Petitions[18]

As required by paragraphs 540-542 of the Order, Appendices to this Petition provide the requested information about Border's individual circumstances to support approval of Border's Petition for Waiver. The required information shows that the Part 54.302 rule and the Framework to Limit Reimbursable Capital and Operating Costs result in reductions in federal USF revenue that would (a) destroy Border's financial viability, (b) eliminate voice service to consumers in the area where Border provides service, and (c) require Border to default on its loan payments to RUS. As required by the Order, the following information is included in this Petition for Waiver:

- All revenues derived from network facilities that are supported by universal service and revenues derived from unregulated and unsupported services that utilize the supported facilities.
- A demonstration that, without its existing universal service funding, Border's revenues would not be sufficient to achieve the purposes of section 254 of the Act.
- A demonstration that Border needs its existing universal service funding in order for its customers to continue receiving voice service in its service area where there is no terrestrial alternative.
- A demonstration that the reduction in existing universal service funding would put consumers at risk of losing voice, and emergency 911 services, with no alternative terrestrial providers available to provide those service using the same or other technologies that provide the functionalities required for supported voice service.
- A demonstration that the specific reforms would cause a provider to default on existing loans and/or become insolvent.
- A specific explanation of why the waiver standard is met in this particular case.

The ratio described above is known as the Times Interest Earned (TIER) ratio by RUS, and it is meant to be a measure of the Borrower's ability to pay interest on a RUS loan. A ratio below one means that a company has insufficient net income to pay the loan interest. As shown on attached Exhibit 8, the rule change drops Border's TIER ratio from a positive 2.8918 in year 2011 to a negative 2.3316 by year 2016.

[18] Order, paragraphs 539 to 544.

Consistent with the Order, Border provides the following information in support of its Petition for Waiver[19]

1. **Density Characteristics**

Border's service territory consists of a very sparsely populated 760 square mile area in Zapata County and southwest Webb County in Texas.[20] Within that service area, there is a population of only 237 people[21], or only .3 people per square mile, and Borders 53 telephone subscribers represent a density of only .07 subscribers per square mile. The distances alone make access to those subscribers time consuming and costly, however there are a number of other factors that also contribute to the high costs of operations in Border's territory.

Temperatures in Border's area are very high for several months of the year. The daily average high temperature in July and August is over 99 degrees, and in two years out of ten a high temperatures of 107 degrees is expected. It is not uncommon to experience temperatures over 100 degrees from March through September.[22] Those temperatures often limit the amount of productive time available to Border's installation and repair forces.

There are 1514 miles of roads within Border's service area[23], the vast majority of which are unpaved. Calculations by Border show a total of only 49.2 miles of paved roads within their service area. Much of the rest of the territory is crisscrossed by unpaved access roads for natural gas collection activities and ranches. Maps of these roads are found in Exhibit 1. With its 53 telephone subscribers, Border has only .04 subscribers per road mile and the majority of those are accessible only by long

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[19] *Order*, ¶ 542.

[20] Border's service area is shown with its fiber network layout on a map in Exhibit 1. It should be noted that Border's true service area is significantly larger, by a factor of roughly two times, than the area identified in the Commission's maps found on its Rate of Return Resources web page at http://www.fcc.gov/encyclopedia/rate-return-resources. The study area boundaries in those maps are derived from Tele Atlas Telecommunications Suite 2010.06 which was used in the Commission's regression calculations. Border is providing separately an updated boundary file in accordance with instructions in Appendix C of the Benchmark Order.

[21] U.S. Census Bureau 2010 Census population of census blocks having centroids within Border's service area.

[22] National Resources Conservation Service National Water and Climate Center *Climate Narrative for Zapata County, Texas.*

[23] U.S. Census Bureau Tiger Line shapefiles, 2010.

drives over rugged unpaved roads.

Another factor which increases the cost of operations is the large number of natural gas collection pipelines found throughout Border's service area. An aerial photographic map showing typical details of such operations is found in Exhibit 1. The existence of these collection pipelines creates a significant amount of additional administrative and operations cost when facilities are installed by Border. Because of the danger associated with natural gas pipelines, specialized construction crews must be hired when work is done in their vicinity, and in order to gain access to the areas where they are located, arrangements must be made in advance with both gas collection facilities operators and the owners of ranches on which most of the gas leases lie.

2. **Alternative Providers**

There are no alternative providers of voice service that serve the entire Border service area in a meaningful way. While AT&T, Verizon, T-Mobile, Sprint, and Cricket in combination claim to serve almost all portions of the area, the reality is that as one travels from the western edges of Border's territory, where wireless coverage is strong, toward the eastern edge, the coverage becomes progressively weaker. Border's testing using handsets from the major carriers showed that calls may be originated while outdoors across most of its area, but that qualitatively the service became unusable as the distances from Highway 83, near which most of the wireless towers are located reached 20 or more miles. Given the distances from cell sites, there is little chance of receiving 3G coverage from any of the wireless carriers, and that is confirmed by coverage maps found on their web sites.

Where wireless coverage is good, it is at least partially due to Border's fiber backbone which provides backhaul services to six towers within its territory, as shown on the map of Border's service area and fiber network found in Exhibit 1.

3. **Accounting of Unused or Spare Equipment**

Unused or spare equipment or facilities are booked to Part 32 Account 2410, Cable & Wire Facilities. Border follows the National Exchange Carrier Association's ("NECA") interpretation of Section 36.153 of the FCC's rules, 47 C.F.R. § 36.153, in the apportionment of spare facilities.[24] Based on this interpretation, Border

[24] NECA's Cost Guideline titles "Spare Fiber C&WF Investment" states "the spare portion of any facility, including fiber, is categorized in the same manner as the in-use portion of the same section of cable. If the spare facility is part of an existing "in use" cable facility, the spare capacity/facilities would get categorized in the same proportion of "in use" categorization (or directly assigned if the entire facility is assignable to one category)." Furthermore, the guideline states that "the FCC's rules also acknowledge that certain C&WF investment that is 'reserved' can be categorized based on an analysis of company records. To the extent that supportable documentation consistent with the

assigns spare facilities to the following categories: Category 1 - Exchange Line, Category 2 - Wideband and Exchange Trunk, and Category 3 - Interexchange. Border's accounting for its spare and unused equipment is provided in detail in the attached Exhibit 2.

4. **Corporate Operations Expense**

Border's total corporate operations expense for 2011 was $536,074. Exhibit 3 details the components of this expense.

5. **End User Rate Plans**

Border offers a comprehensive collection of modern telephone services. A complete listing of services and rates is found in Exhibit 10.

Primary contributors to local revenues include the following rate elements:

- Basic Residential Service (R1): $20.90
- Basic Business Service (B1): $41.80
- Mandatory Expanded Local Calling Service to Zapata and Falcon Heights exchanges:
  - Residential: $3.50
  - Business: $7.00

6. **List of Services Other than Voice Services Provided Over the USF Support Plant**

Border offers Digital Subscriber Line ("DSL") to 100% of its customers. 39.6% of Border's customers subscribe to its broadband services. As of June, 2012, Border's customers subscribed to the following broadband rate plans:

- $30.95 Basic (DSLBAS) 256 kbps download: 17 customers[25]
- $44.95 Medium(DSLMED) 384 kbps download: 2 customers
- $89.95 Super (DSL150) 1.5 Mbps download: 2 customers

A complete list of available internet service plans is included in Exhibit 10.

7. **Procedures for Allocating Shared or Common Costs Between Regulated and**

FCC's rules (*e.g.*, cable engineering and assignment records) identifying the facilities 'kept or set apart for a specific use' is provided, companies have the ability to separately assign the cost of reserved cable to the various C&WF categories within the boundaries of the FCC's rules."

[25] Includes 4 customers grandfathered on wireless internet connections.

Nonregulated Services or Operations

Border's cost allocation procedures are provided in Exhibit 4, which details the Part 64 procedures used by the Company to allocate regulated and non-regulated costs.

8. **Audited Financial Statements**

Attached as Exhibit 5 are the audited financial statements of Border for 2009, 2010 and 2011.

9. **Information Regarding Outstanding Loans**

As of 12/31/11 Border had $3,961,267 in outstanding loans with RUS as shown on attached Exhibit 6. The interest rate for this debt is 5.0% and the payoff dates for the individual loans range from 2014 to 2023. As of 12/31/11 Border had $3,582,267 in long-term debt and $379,000 in current debt. Monthly loan payments are approximately $48,000. As a covenant to its RUS loans, Border must maintain a TIER (Times Interest Earned Ratio) of 1.48 or above.

10. **Identification of the Specific Facilities That Will Be Taken Out Of Service**

The projected impact of the Commission's new rules will force Border out of business within the next three to four years. Removing selected facilities from service would not forestall Border's eventual demise. Absent a waiver, Border will not be able to remain in operation beyond 2015. See Exhibit 8.

11. **Five-Year Pro Forma Financial Analysis of the New USF Rules' Impact on Border**

Border had an independent consulting firm prepare a financial analysis of the projected impact of the FCC's new USF rules. Attached as Exhibit 7 is a five-year pro forma baseline financial statement that reflects Border's projected financial performance without taking into account the Commission's new universal service rules. The consulting firm also prepared a five year pro forma financial statement, attached as Exhibit 8, which estimates the financial effects of applying the *USF Transformation* Order to Border.

As reflected in Exhibit 9, Border will not be able to continue operating after year 2014 without receiving a waiver from the Commission. The new FCC rules will reduce total revenues by the following amounts

Year 2012	-$270,413	a reduction of 9.54% of total revenue
Year 2013	-$749,608	a reduction of 25.49% of total revenue
Year 2014	-$1,202,150	a reduction of 40.68% of total revenue
Year 2015	-$1,451,991	a reduction of 48.42% of total revenue
Year 2016	-$1,359,675	a reduction of 47.37% of total revenue

Beginning in 2013 the new FCC USF Rules will cause Border to violate the TIER requirements of its RUS loan agreements and to realize net losses. As a result of the decrease in universal service support Border's cash reserves will be completely depleted by 2015 and it will be unable to continue operations.

F. Summary of Facts Provided by This Petition For Waiver

1. The effect of the FCC's new USF rules will have the following effect on Border's total company (regulated and non-regulated) financials, namely, a significant and devastating loss of revenues which will render the company unable to continue operations:

Date	Total Revenue	Percent Reduction	Net Income	Return on Rate Base	TIER Ratio
2011	$2,529,111	0.00%	$ 387,690	6.4%	2.8918
2012	$2,564,750	9.54%	$ 352,643	5.0%	2.5203
2013	$2,190,038	25.49%	$ (207,897)	-2.6%	0.2790
2014	$,1,752,806	40.69%	$ (606,166)	-8.1%	(1.0206)
2015	$1,546,683	48.43%	$ (811,537)	-11.9%	(1.9603)
2016	$1,510,888	47.37%	$ (822,948)	-13.3%	(2.3316)

2. Consumer voice rates if the revenue shortfall for the changes adopted are flowed through to Border's customers would be unjust, unreasonable and unaffordable:

	Monthly Basic Rate	Monthly Rate Increase	Total Monthly Rate
July 1, 2012	$ 29.97	$ 230.13	$ 260.09
July 1, 2013	$ 260.09	$ 725.68	$ 985.77
July 1, 2014	$ 985.77	$ 1,245.43	$ 2,231.20

3. Non-Regulated Income will not offset these losses:

- Year 2011 Non-Regulated Revenue $41,985
- Year 2011 Non-Regulated Expenses $41,390
- Year 2011 Non-Regulated Net Income $ 595
- Non-Regulated Annual net income per-voice line $ .60

4. The changes will result in the inability of Border to repay its RUS loans.

- Annual loan principal $381,007
- Annual loan interest $189,411

- Total principal and interest $570,418
- Section 54.302 rule revenue loss on 7-1-2012 is $196,002, and increases to $877,313 by 2014.
- Framework to Limit Reimbursable Capital and Operating Costs revenue loss on July 1, 2012 is $33,202, and increases to $363,135 by 2014.

Even if RUS were willing to modify its loan terms, no reasonable modification of the loan terms will allow Border to meet its loan commitment to RUS. With the full realization of the 54.302 USF support cap impact, Border would not be able to repay the loan principal. Loss of Federal USF revenue associated with the Framework to Limit Reimbursable Capital and Operating Costs wouldn't allow Border to repay its RUS loan pursuant to the RUS loan requirements. As shown on Exhibit 8 (attached to this Petition) TIER ratios fall significantly below RUS requirements. It would not be possible to extend loan repayment since it would require payment well beyond the economic life of the financed plant, which is a practice that is inconsistent with RUS loan requirements. Essentially, Border, in the future, would lack cash flow generated through the charging of depreciation on the financed plant.

5. There is no terrestrial alternative that can provide reliable and study area wide voice service to Border's customers.

6. Border's network has already been placed into service and was constructed in accordance with RUS specifications and guidelines. As a consequence, there is no alternative technology that Border could use to reduce its network costs.

IV. THE PUBLIC INTEREST WOULD BE SERVED BY GRANT OF AWAIVER

A. The Grant of a Waiver to Border would be Consistent with the Explicit Goals of Congress and the Commission.

The Commission's Rulemaking Notice in WCB Doc. No. 10-90 established four policy goals: *Modernize USF and ICC for* Broadband, Fiscal Responsibility, Accountability, and Market-Driven Policies.[26] The Order focused on these policies in the context of the Congressional polices set forth in Sections 254 and 706 of the Act. Among the goals adopted are preservation

[26] *Connect America Fund; A National Broadband Plan for Our Future;* Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4560-61 (2011) (*USF/ICC Transformation NPRM*).

and advancement of voice service, universal availability of voice and broadband, and reasonably comparable rates for voice and broadband, all while minimizing the contribution burden on consumers.[27]

Border has met all of the statutory goals, objectives and requirements of the 1996 Act, commencing with Border's formation in 1991 and the subsequent design and build-out of a modern communications system by Border starting in 1993, and continuing to the present. Border has also placed full reliance on various orders or directives of this Commission, the Public Utility Commission Texas (PUCT), and loan decisions of the Rural Utility Services (RUS).

The grant by the Commission of a waiver to Border would also be consistent with the overall goals and objectives of the Commission's Order.

Border by the date of the Commission's Notice had developed a modern network in its territory to provide the envisioned services referenced in the Notice. Border had also complied fully with all regulatory orders, including adherence to rigorous loan and audit oversight exercised by its accounting firm, cost consultant, independent audit firm, the FCC, NECA and the RUS. Border has thus successfully met and complied with the principles set forth in the Commission's Notice. With respect to the last listed factor referenced in the Notice above, ("market-driven policies"), Border asserts that no service in its territory would or could have been provided under "market-driven policies." Congress in the 1996 Act established the Universal Service Fund (USF) in recognition of the fact that the desired universal service objective could not be achieved in some areas, such as that served by Border , utilizing "market-driven policies." Congress recognized that the "market" would not provide the requisite service in some areas absent the USF, and therefore included the USF provisions in the 1996 Amended Act to provide a mechanism to promote service in areas that would not be provided service by the "market."

The Commission's NPRM (paragraph 80) also stated in relevant part:

> Consistent with the statute and the Joint Board recommendations, we propose four specific priorities for the federal universal service high-cost program. *First*, the program must preserve and advance voice service…. *Second*, we seek to ensure universal deployment of modern networks capable of supporting necessary broadband applications as well as voice service…. *Third*, the program must ensure that rates for broadband service are reasonably comparable in all regions of the nation…. *Fourth*, we seek to limit the contribution burden on households. As we have recognized in the past, "if

[27] Order at paras. 49, 51, 55 and 57.

> the universal service fund grows too large, it will jeopardize other statutory mandates, such as ensuring affordable rates in all parts of the country, and ensuring that contributions from carriers are fair and equitable." [fn omitted].

The Commission has indicated concerns in its Order that USF funds can be more efficiently utilized, so as to eliminate certain "waste and inefficiencies." The Commission also seeks to stretch USF dollars to promote more access to communications on a national basis, with some emphasis on broadband and wireless technologies. The Commission also wants to ensure that USF funding, and surcharges on customer bills to provide such funding on a national basis, does not become burdensome on communications customers (although the Commission does not cite empirical evidence that this threshold has occurred). The Commission also wants to address some perhaps abusive anomalies, and to exert more efforts to carry out its responsibilities relative to USF funding.

The application of the Order to Border is not necessary or helpful to promoting these goals and objectives. Consistent with the 1996 Act and the proposal of the USF, Border has been very successful in (i) advancing voice service (and for the first time in a previously unserved "black hole" in southern Texas; (ii) in deploying modern networks capable of supporting necessary broadband applications as well as voice and emergency 911 service; (iii) in ensuring that rates for broadband service are reasonably comparable to all regions of the nation; and (iv) in limiting the contribution burden on households.[28] Border is also unaware of any Commission analysis or record that the USF has grown too large, or that the USF has jeopardized other statutory mandates, such as ensuring "affordable rates" or ensuring that "contributions from carriers are fair and equitable."

Border also asserts that the Commission grant of a waiver to Border would be consistent with the objectives stated in the Commission's Order as well as the 1996 Act. All of Border's existing modern network has been designed and constructed utilizing predominantly the funds provided by RUS loans. The approval of the RUS loans and the construction of Border 's network was all undertaken consistent with the plain language, objectives, and intent of the 1996 Act and Orders or decisions of this Commission, the RUS, and the Public Utility Commission Texas. Both

[28] With respect to factor (iv) above, there exists no showing that the build-out of Border's advanced modern communications facilities and network utilizing USF resources has resulted in a "contribution burden on households" or that equivalent build outs by Border or other companies in accordance with the 1996 Act amendments would cause the universal service fund to grow too large, or would compromise other statutory mandates, such as ensuring affordable rates to all parts of the county, and ensuring that contributions from carriers are fair and equitable."

Border and the RUS have heavily relied upon continued USF funding at present levels as the basis for entering into the RUS loans, constructing Border's network to serve its service area, and as the security to cover loan principal and interest obligations.[29]

Border's creation and development, utilizing USF Funds, has carried out the intent of Congress as stated in the 1996 Act. By obtaining RUS loans secured by the revenue stream provided by USF funds, Border has been able to achieve the goals and objectives of the 1996 Act, by implementing and providing service to a sizeable rural area that was previously without service. Border's network is comprised of modern and technologically advanced facilities that are fully capable of providing both voice and broadband services. Border now provides all emergency and other services to its service area as an ILEC. Border's facilities and network, and its rate structures, are also comparable to facilities existing in urban areas. Border's network provides the infrastructure to provide and expand broadband services to the public. Since these are major goals or objectives sought to be accomplished by the Commission's Order, then how can the application of the Order to destroy Border's finances and ability to provide such services be aligned with the stated objectives of the Order?

The granting of a waiver to Border would recognize that Border's status and circumstances are distinguishable from most other companies. Border is among the newest companies, and has built a network in an unserved area, all pursuant to very recent regulatory orders. Unlike many other companies, Border's facilities are largely undepreciated, and the unamortized portion of its loans is larger. Border is one of the few companies that would be financially destroyed on an immediate basis by application of the Commission's Order, a result that will also cause a default of loans issued by a sister federal agency (the RUS). These exigent circumstances provide compelling reasons and good cause for the grant of a waiver to Border.

B. Waiver in special circumstances such as those encountered by Border is essential to maintenance of the Benchmark Framework

In its recent Order denying several petitions for stay of the Benchmark Implementation Order, the Bureau concluded that petitioners had not demonstrated irreparable harm because it

[29] Because Border is such a new company, the RUS loans sill have a remaining amortization of several years, and the revenue stream provided by the USF was pledged as the security to cover the principal and interest payments on the RUS loans.

believed that they had not shown their injury to be certain, great and actual in the near future.[30] To constitute irreparable harm, economic loss must threaten "the very existence of the movant's business."[31] Although Border is seeking a waiver, not a stay, the facts presented in this petition nevertheless make clear that its business has no future absent a waiver. [32] The Bureau also concluded that the existence of the waiver process adopted by the Commission in the Transformation Order is further evidence that the stay petitioners are not irreparably harmed.[33]

The quantile regression analysis adopted by the Bureau is acknowledged to be an "estimate" of the capital and operating expenses of a given company's "similarly situated peers" in order to limit reimbursement of expenses through HCLS to "prudent levels of cost" so that it does not more support than necessary to serve its community.[34] Consistent with the recognized fact that models cannot always accurately identify prudent costs for a given company because of the wide range of circumstances under which rural telephone companies operate, the Commission provided for waiver of the limitations where the results would be inconsistent with the overall objectives of universal service. The integrity of the Benchmark process therefore requires that the Commission recognize its logical limitations in appropriate circumstances, such as those demonstrated here by Border.

C. Waiver would protect the Government's security interest.

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[30] Connect America Fund, High-Cost Universal Service Support, WC Doc. Nos. 10-90, 05-337, Order, June 26, 2012, DA 12-997 at para. 8. ("Stay Denial Order")

[31] *Id.*

[32] In addition, the Commission's Order, as applied to Border, must be at least be 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 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.)

[33] *Id at para. 10.*

[34] Order at para. 210

Border has demonstrated in this petition that absent waiver it will necessarily default on $5.3 Million in RUS loans. Border is not alone in this respect as shown by the recent meeting between Secretary of Agriculture Vilsack and Chairman Genachowski. The memorandum of that meeting filed by RUS Administrator Adelstein stated:

> The Secretary noted that the RUS makes loans to finance the construction and upgrade of high capacity broadband networks whose terms can exceed 20 years. He noted these investments were made under then-current rules with the understanding that the revenues would be necessary to recover costs and repay loans to lenders including RUS. He noted that consumers and lenders need certainty and predictability in their investment horizon. The Secretary noted that the regression analysis model can affect long term revenues and USF predictability.
>
> The Administrator noted that RUS only finances capital infrastructure, and that every RUS loan and grant dollar is scrutinized by program and field staff, and that each dollar spent in the RUS program is tied to specific purchases that are audited. RUS does not tolerate waste, fraud or abuse, ensuring that dollars are prudently spent.

Border's loans are of course a small portion of the RUS portfolio, however in evaluating Border's waiver request, the Commission should give substantial weight to the Secretary's expressed concerns that loans made under prior USF rules must still be repaid or the US government will suffer the loss.

The meeting with the Secretary and the Administrator is also relevant to the question of whether expense levels that exceed the benchmark may nonetheless be prudent. As Administrator Adelstein pointed out, RUS loans are granted only after careful scrutiny and tied to specific, audited purchases and that waste, fraud and abuse are not tolerated. Border's RUS loans exactly fit this pattern. The RUS review process is thus an effective check on whether a model has accurately predicted imprudent investment in any given case.

V. CONCLUSION AND REQUEST FOR RELIEF

Border requests that this Petition for Waiver for Border be approved as soon as possible, given the July 1, 2012 implementation date of the Ordered Federal USF reforms. This Petition for Waiver clearly demonstrates that good cause exists for exempting Border from (a) the Part 54.302 rule and (b) the Framework to Limit Reimbursable Capital and Operating Costs. Border therefore respectfully requests the Commission to grant the following relief pursuant to this Petition:

A. That the Commission waive and exempt Border from (a) the Part 54.302 rule and (b) the Framework to Limit Reimbursable Capital and Operating Costs;

B. That the Commission recognize in all respects Border 's unique status and compelling grounds for full relief pursuant to this Waiver Petition, and find that the approval by the

Commission of this Waiver Petition is necessary and in the public interest to ensure that Border can continue to provide voice and other services to the public as an ILEC pursuant to this Commission's previous approvals, and can continue Border's capability to provide voice, Broadband and other services to the public;

C. That the Commission grant such other, further and consistent relief that is lawful and reasonable.

Border will promptly provide any additional information requested by the Commission Staff and welcomes their requests.

Respectfully submitted,
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June 29, 2012 :