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

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| In the Matter of | ) | |
| | ) | |
| Connect America Fund | ) | WC Docket No. 10-90 |
| | ) | |
| Universal Service Reform – Mobility Fund | ) | WT Docket No. 10-208 |
| | ) | |
| Accipiter Communications Inc. Petition for Waiver of the Commission's Rules Implementing Reform of Universal Service Support | ) ) ) | |

**AMENDMENT TO PETITION FOR TEMPORARY WAIVER**

Accipiter Communications Inc. ("Accipiter"), hereby amends its Petition for Temporary Waiver submitted in the above-referenced dockets on April 18, 2012 ("Waiver Request"). As explained in more detail below, Accipiter now requires a significantly narrowed waiver of the Commission's rules.

## I. ACCIPITER REQUIRES ONLY A WAIVER TO ALLOW USE OF ITS CURRENT LINE COUNTS.

In its Petition for Waiver, Accipiter originally requested: (1) a waiver of the per-line cap until either December 31, 2014 or December 31, 2015, predicated on the assumption that the regression caps do not apply to Accipiter; and (2) a waiver of the FCC rules so that the regression caps would not apply to Accipiter until six months after the FCC has made updated regression cap formulas publicly available and corrected the errors and incorrect assumptions and methodologies in its regression cap formulas. With respect to the request for a waiver of the per-line cap, in its Petition for Waiver, Accipiter pointed out that the Commission had not clarified which line count would be used to calculate the per-line cap. In particular, Accipiter stated that, if the Commission were to use Accipiter's 2010 loop count, Accipiter would require a waiver of the $250 per-line cap until December 31, 2015 – whereas, if the Commission were to use Accipiter's 2011 loop count, Accipiter would require a waiver only until December 31, 2014.

Accipiter stressed to the Commission the waiver it sought was temporary, because Accipiter's ongoing rapid growth would allow Accipiter to grow out of the caps as it added lines.

On April 25, 2012, the Bureau released an order altering its USF methodology in a number of respects.[1] The revisions have the effect of establishing a computation methodology which will be effective in 2012 and 2013. Using the revised methodology, Accipiter has determined that if the methodology is applied based upon Accipiter's current line count (current as of the second quarter of 2012) rather than using an outdated line count from 2010 that is no longer accurate, Accipiter is close enough to the per-line caps and regression that it can survive without waiver of those caps. At this time, the FCC has indicated its intention to alter again the USF methodology to be used in 2014. However the FCC has not indicated what changes will be made for 2014 and thus Accipiter is unable determine the scope of any waiver that will be required beyond 2013. Accipiter thus amends its request for a waiver to seek only that for the years 2012 and 2013 the Commission use Accipiter's most current line count data as of June 30, 2012, as a replacement variable in the per-line formula and regression formulas for determining the company's USF limitations. *****BEGIN REDACTED**

**END REDACTED*****. Use of the current and correct line count for Accipiter will avoid needlessly jeopardizing the company's financial viability for no purpose and is consistent with both the Commission's long-term goals for high-cost support as well as with Accipiter's showings regarding its growth.

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[1] *Connect America Fund, High-Cost Universal Service Support*, Order, 27 FCC Rcd 4235 (2012).

## II. EXPEDITIOUS GRANT OF THE WAIVER WOULD SERVE THE PUBLIC INTEREST.

Waiver of the Commission's rules is appropriate where "particular facts would make strict compliance inconsistent with the public interest." *AT&T Wireless Services, Inc. v. FCC*, 270 F.3d 959, 965 (D.C. Cir. 2001), citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). The Commission may waive its rules for "good cause" if "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular*, 897 F.2d at 1166. In particular, in adopting its reforms to the universal service support and intercarrier compensation mechanisms, the Commission expressly contemplated waivers where there was a risk that customers could lose service if existing levels of high-cost support were reduced:

> "As a safeguard to protect consumers, we provide for an explicit waiver mechanism under which a carrier can seek relief from some or all of our reforms if the carrier can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice service, with no alternative terrestrial providers available to provide voice telephony."[2]

In support of this amendment to its waiver request, Accipiter updates its analysis of its financial forecasts by attaching exhibits showing the company's financial forecasts under three different assumptions. Exhibit 1 shows the company's financial forecasts for 2012 and 2013 assuming that the $250 per line and regression caps do not go into effect, but that the other reforms in the Commission's USF/ICC Transformation Order go into effect. Exhibit 2 shows the company's financial forecasts for 2012 and 2013 with the per line and regression caps and

[2] Connect America Fund, *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, FCC 11-161 at ¶ 32.

without the benefit of the waiver Accipiter requests. Exhibit 3 shows the company's financial forecasts for 2012 and 2013 if the Commission grants the waiver Accipiter requests herein.

A review of these exhibits demonstrates that a waiver is plainly warranted in this case. In the Exhibit 1 scenario, Accipiter would have *****BEGIN REDACTED**

**END REDACTED*****. The company would have *****BEGIN REDACTED**

**END REDACTED*****. In the Exhibit 2 scenario, without the benefit of a waiver, Accipiter would experience *****BEGIN REDACTED** **END REDACTED*****. In turn, this would mean that the company would have *****BEGIN REDACTED** **END REDACTED*****. Absent a waiver, Accipiter *****BEGIN REDACTED**

**END REDACTED*****. In contrast, if the Commission permits Accipiter to use its current 2012 line count, Exhibit 3 demonstrates that *****BEGIN REDACTED**

**END REDACTED*****. This is far from an ideal scenario. Even with the waiver it is requesting, Accipiter would, because of the new USF caps, experience *****BEGIN REDACTED**

**END REDACTED*****. Further, the company would experience *****BEGIN REDACTED**

**END REDACTED*****. Simply put, grant of the waiver will *****BEGIN REDACTED**

**END REDACTED*****. Accipiter's limited waiver request will still result in the loss of significant support, with significant reductions in net income. The company will, however, likely be able to survive such losses. Without a grant of the requested, very limited waiver, however, *****BEGIN REDACTED**

**END REDACTED*****.

Forcing Accipiter to use outdated, inaccurate data would *****BEGIN REDACTED**

**END REDACTED***** and could risk the loss of service to Accipiter's customers. It would certainly be arbitrary and capricious to force the company to use line counts that are inarguably inaccurate. Further, grant of the limited waiver Accipiter seeks would serve the Commission's goal of capping and reducing USF support by reducing total support received by Accipiter by nearly *****BEGIN REDACTED END REDACTED***** over two years. Under these circumstances, it is clearly appropriate to grant Accipiter a limited waiver that does nothing more than allow Accipiter to use its current and correct line counts, rather than outdated line counts that do not reflect the company's present circumstances because they fail to account for the robust growth the company has experienced. As noted above Accipiter limits its amended waiver request to the years 2012 and 2013. Even with the waiver granted Accipiter will experience substantial declines in revenue for those years attributable to imposition of the new USF methodology which Accipiter has shown contains incorrect assumptions and methodological errors that make application of the methodology to Accipiter inappropriate.

## III. CONCLUSION

For the foregoing reasons, Accipiter urges the Commission to act expeditiously to grant Accipiter a limited waiver that applies the $250 per-line cap and regression independent variables based on Accipiter's current and correct line count, rather than on outdated, inaccurate data.

Respectfully Submitted

/s/ Patrick Sherrill

Patrick Sherrill
President and Chief Executive Officer
Accipiter Communications Inc.
2238 W. Lone Cactus Dr.
Suite 100
Phoenix, AZ 85027
(623) 455-4500

July 19, 2012

# EXHIBIT 1

**REDACTED**

# EXHIBIT 2

**REDACTED**

# EXHIBIT 3

**REDACTED**

## CERTIFICATE OF SERVICE

I, Patrick Sherrill, hereby certify that on July 19, 2012 I sent by first class United States mail copies of the foregoing Supplement to the following parties:

Abdel Eqab
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Charles Tyler
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

J.G. Harrington
Dow Lohnes PLLC
1200 New Hampshire Avenue, NW
Washington, D.C. 20036-6802
(Counsel for Cox Communications, Inc.)

/s/ Patrick Sherrill
Patrick Sherrill