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STATE OF MONTANA

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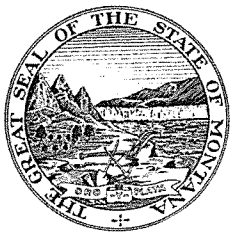

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October 26, 2012

Ms. Julie Veach
Chief, Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street S. W.
Washington D.C. 20554

RE; WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92,96-45; GN Docket Nos. 09-51
Written Ex Parte Communication

Dear Ms. Veach:

On July 1, 2013, the Federal Communications Commission (FCC) rules CFR §54.313(a)(1) require all Eligible Telecommunications Carriers (ETCs) to file with the FCC, the Montana Public Service Commission (MPSC), and relevant Tribal Authorities, 5-year network buildout plans which will detail how those ETCs intend to meet their new broadband deployment obligations. Beginning on July 1, 2014 each ETC must submit annual progress reports on the ETC's 5-year plan.

A significant number of Montana ETCs have expressed serious concerns to the MPSC regarding their ability to develop meaningful 5-year plans because of the uncertainty surrounding future Universal Service Fund (USF) support and the FCC Quantile Regression Analysis (QRA) model. Quite simply, it is virtually impossible for an ETC to develop and commit to a 5-year plan if the ETC does not know the level of USF support that will be available for those 5 years. Southern Montana Telephone Company (SMTC) sent a letter to the FCC Wireline Competition Bureau (WCB) on June 1, 2012 (see Attachment 1) seeking clarification and advice this and other issues. SMTC received no reply to their letter. On October 5, 2012 SMTC sent an additional letter to the FCC WCB requesting the same information (see Attachment 2). SMTC is currently awaiting a response. In Montana, many other ETCs share the concerns of SMTC. The MPSC takes these concerns regarding the uncertain and unpredictable amounts of future USF support very seriously.

State Commissions across the United States have recognized that there is a problem regarding the uncertain nature of future USF support. The National Association of Regulatory Utility Commissioners (NARUC) adopted a resolution on July 25, 2012 titled "*Resolution Urging the Federal Communications Commission to Refrain from Implementing Quantile Regression Analysis on Rural Rate-of-Return Carriers Until Concerns Are Resolved, and To Engage State Regulators in Consideration of Next Steps.*" (see Attachment 3).

The MPSC demands the FCC WCB respond to questions from Montana ETCs that are seeking information and clarification of future USF support amounts. In the meantime, the MPSC firmly supports the NARUC resolution that the FCC forgo implementation of the QRA Model until widespread concerns regarding the QRA's legal assumptions, methodology, application, accuracy, predictability, randomness, and appropriateness are resolved.

Sincerely,

Travis Kavulla
Chairman - Montana Public Service Commission

Copies to: Senator Max Baucus
Senator John Tester
Representative Dennis Rehberg

Attachment 1 - June 1, 2012 SMTC Letter to the FCC Wireline Enforcement Bureau

Southern Montana Telephone Company
PO Box 205
Wisdom, MT 59761
406-689-3333
Fax: 406-689-3959

June 1, 2012

Ms. Sharon Gillett
Chief, Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S. W.
Washington, D.C. 20554

Filed 6/1
Conf. # 20126116799 8

Re: WC Docket Nos. 10-90,07-135,05-337,03-109; CC Docket Nos. 01-92, 96-45; GN Docket Nos. 09-51
Written Ex Parte Communication

Dear Ms. Gillett:

Southern Montana Telephone Company ("SMTC") is a rate-of-return incumbent local exchange carrier providing communications services in rural Montana. We are seeking clarification and further details from the Wireline Competition Bureau with respect to the effects of the Quantile Regression Analysis (QRA) and related caps on Universal Service Fund (USF) support on SMTCs operations.

As of April 2012 SMTC served 934 voice customers, 453 of whom are also broadband customers, across approximately 2,200 square miles in Southwest Montana. With less the 0.5 subscribers per square mile SMTC serves one of the most rural areas of Montana, indeed the nation.

In 2006 SMTC recognized the need for broadband services and began replacing decades-old copper with a fiber network to provide reliable voice and broadband services to its subscribers. Our build-out to date has replaced copper loops with fiber-to-the-home for about half our subscribers and has shortened copper loop lengths, allowing SMTC to provide faster broadband speeds to more of our customers. While the electronics deployed in our network will theoretically deliver 4Mbps/1Mbps broadband speeds out to approximately 2.6 miles over copper, with 382 copper loops over 2.6 miles (40% of our subscribers) and an average loop length of 1.97 miles SMTC still has work to do to achieve the National Broadband Plan's targeted speeds to all customers. However, the unpredictability of support, partly due to QRA, has forced SMTC to suspend further investment in rural broadband, placing our upgrade on hold to the detriment of our subscribers in addition to the jobs lost as a consequence of curtailed construction.

Although SMTC is apparently not adversely affected by the caps on USF support at this time it appears we are very close. In an effort to determine whether continued investment is a viable option for our customers, we want to assess what, if anything, can be done now to avoid the application of these caps in future years. To achieve this objective, we need further information or guidance from the Bureau. Specifically, we need to understand:

Attachment 1 –Continued

(1) How our study area boundary was established in the algorithms used to develop the caps?
(2) What census blocks were included within those study area boundaries used in the algorithms applicable to SMTC?
(3) What, if anything, SMTC can do to avoid the application of caps in subsequent years through changes or continued practices in operations or investment methodologies?
(4) How SMTC can determine what changes, if any, might occur to the algorithms and caps in subsequent years so that SMTC can plan accordingly to operate and invest in as "efficient" and "prudent" a manner as possible by reference to the caps?

This information, and any related underlying data that the Bureau can provide with respect to how and why the caps may or may not affect SMTC, is essential as we struggle to develop network investment and operating plans that account for the effect of the caps but continue to satisfy the public interest goals of deploying broadband service in rural America. For example, while SMTC is unaffected by the caps today, we need to be able to evaluate the potential effects of the caps in considering any future network construction or upgrade plans; currently there is no clear path as to how such analysis can be done. Without this information, SMTC fails to see how the caps will encourage further investment in broadband infrastructure, promote "efficient" or "prudent" behavior, or provide a predictable support mechanism because we will not know what is expected by the new rules or how they will affect future investment decisions.

Please provide this information and guidance as soon as possible so that we may make every reasonable effort to plan for the possible effects of the caps in our strategic planning. Thank you for your attention to this request.

Sincerely,

Larry B. Mason
Vice-President and General Manager

cc: Senator Max Baucus
Senator Jon Tester
Congressman Denny Rehberg

Attachment 2 – SMTC October 5, 2012 Letter to the FCC wireline Competition Bureau

Southern Montana Telephone Company
PO Box 205
Wisdom, MT 59761
406-689-3333
Fax: 406-689-3959

October 5, 2012

Ms. Julie Veach
Chief, Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S. W.
Washington, D.C. 20554

Re: WC Docket Nos. 10-90,07-135,05-337,03-109; CC Docket Nos. 01-92, 96-45; GN Docket Nos. 09-51
Written Ex Parte Communication

Dear Ms. Veach:

On June 1, 2012 Southern Montana Telephone Company ("SMTC") filed the attached letter with the Wireline Competition Bureau seeking clarification and further details concerning the effects of the Quantile Regression Analysis ("QRA") and related caps on Universal Service Fund support on SMTCs operations. As of October 5, 2012 SMTC has received no response or acknowledgement of receipt of our letter.

SMTC is working on its budgetary forecast, including five year strategic operating and capital expenditure plans. SMTC fails to see how it can develop a five year plan by July 1, 2013, as required by the Commission, with any reasonable confidence without first having answers to the questions posed. To reiterate, SMTC needs to understand:

(1) How our study area boundary was established in the algorithms used to develop the caps?
(2) What census blocks were included within those study area boundaries used in the algorithms applicable to SMTC?
(3) What, if anything, SMTC can do to avoid the application of caps in subsequent years through changes or continued practices in operations or investment methodologies?
(4) How SMTC can determine what changes, if any, might occur to the algorithms and caps in subsequent years so that SMTC can plan accordingly to operate and invest in as "efficient" and "prudent" a manner as possible by reference to the caps?

A clear understanding of this information will help SMTC determine whether continued infrastructure investment is a viable option for our company and the customers we serve. Such guidance from the Bureau is essential as we struggle to develop network investment and operating plans that account for the effect of the caps but continue to satisfy the public interest goal of deploying broadband service in rural America. Without clear, unambiguous guidance, SMTC cannot, in good conscience, risk a five year plan that it may not be able to achieve.

SMTC believes the Bureau is currently empowered to provide the clarity relative to the effects of the QRA and related caps necessary to allow SMTC to develop a manageable five year plan.

Attachment 2 – Continued

Please provide this information and guidance as soon as possible so that we may make every reasonable effort to plan for the possible effects of the caps as we develop our strategic plan, as required by the Commission. Thank you for your attention to this request.

Sincerely,

Larry B. Mason
Vice-President and General Manager

Attachment

cc: Senator Max Baucus
Senator Jon Tester
Congressman Denny Rehberg
Chairman Travis Kuvulla, Montana Public Service Commission

Attachment 3 - July 25, 2012 NARUC Resolution

Resolution Urging the Federal Communications Commission to Refrain from Implementing Quantile Regression Analysis on Rural Rate-of-Return Carriers Until Concerns Are Resolved, and To Engage State Regulators in Consideration of Next Steps

WHEREAS, The November 18, 2011, Universal Service Fund/Intercarrier Compensation Order (USF/ICC Transformation Order) adopted a specific mechanism, the Quantile Regression Analysis (QRA) as a proxy for identifying appropriate costs in "ensuring" that companies do not receive more support than necessary for prudent capital and operating costs, as set forth by the Federal Communications Commission (FCC) in Appendix H of the USF/ICC Transformation Order; *and*

WHEREAS, The FCC also issued a Further Notice of Proposed Rulemaking (FNPRM) with the Transformation Order that contemplates additional changes to USF and ICC systems, including further ICC rate reductions; *and*

WHEREAS, On February 17, 2012, the Rural Broadband Alliance filed reply comments with the FCC asserting that the QRA Model is not properly crafted to be transparent, predictable, and did not consider the effects of its implementation on universal service so that it provides no impacts on rural carriers' opportunity to recover the lawful expenses they have incurred in the provisions of universal service; *and*

WHEREAS, On April 25, 2012, the FCC Wireline Competition Bureau issued an order (sometimes referred to as the Benchmarks Order) using a particular QRA model for capital and operating expenses and implementing, without any further review of the assumptions, methodology and impact (except the output of the unproven statistical tool), certain reductions in USF support for some USF recipients beginning July 1, 2012; *and*

WHEREAS, The QRA Model of April 25, 2012, continues to use a ninetieth percentile to apply limits which, despite questions about its methodology, assumptions, and applications, operates to potentially impair carriers from completing infrastructure projects begun before QRA Model adoption, and may not provide all carriers with sufficient and predictable support consistent with basic principles of universal service mandated by Congress; *and*

WHEREAS, On May 8, 2012, CoBank, a key lender to rural rate-of-return carriers, sent a letter to the FCC asking that the FCC abandon its use of QRA to cap USF support to carriers, citing potential errors and inconsistencies in the model's assumptions that cause it to produce counter-intuitive and surprising results that would penalize rate-of-return carriers that have made substantial good faith commitments to providing broadband networks; *and*

WHEREAS, On June 21, 2012, USTelecom filed an Application for Review with the FCC requesting a brief delay of the QRA in order to resolve concerns related to transparency, accuracy, and predictability, in particular citing the expense and complexity of determining the impact of using the QRA Model on carriers, the inaccuracy of the study area boundaries, concern within the rate-of-return community that the QRA methodology and its application may be arbitrary and capricious and the fact that other petitions for stay have been filed with the FCC and federal court; *and* **WHEREAS,** Accurate study area boundaries are particularly important to the regression-based model used by the FCC and the FCC has not yet determined the process for obtaining accurate study area boundaries; *and*

WHEREAS, State commissions are uniquely situated to fully comprehend the local geography, population density, cost characteristics and other factors which contribute to the determination of universal service needs; *and*

WHEREAS, The Federal–State Joint Board on Universal Service (USF Joint Board), which is made up of FCC Commissioners, State commissioners and consumer advocate representatives, was created by the Telecommunications Act of 1996 (TA96) for the purpose of making recommendations to implement the universal service provisions of the Act; *and*

WHEREAS, The FCC did not make a referral of the USF reform issues (including ICC issues that affect universal service) contained in the Transformation Order to the USF Joint Board and formally

declined a request of the State members for a referral of the Further Notice and Proposed Rulemaking (NPRM); *and*

WHEREAS, The QRA Model's retroactive impact on carriers may trigger avoidable litigation alleging retroactive ratemaking in violation of Section 205, 47 U.S.C. § 205, contrary to prior FCC decisions, including *In re: ACC Long Distance v. Yankee Microwave, Inc.,* 8 F.C.C.R. 85, aff'd 10 F.C.C. R. 654 (1995), and federal precedent in *Ohio Bell v. FCC,* 949 F.2d 864, 867 (6th Cir. 1991); *and*

WHEREAS, On June 21, 2012, the Rural Broadband Alliance (RBA) representatives met with FCC representatives to outline RBA's continuing concerns that the QRA Model has created uncertainty about the level of USF support that is preventing rate-of-return carriers from developing meaningful budgets for 2014 and beyond; *now, therefore be it*

RESOLVED, The Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2012 Summer Meeting in Portland, Oregon, acknowledges the need for the FCC to forgo implementation specifically of QRA-based caps on capital and operational expense for rural rate-of-return carriers, until the resolution of the Application for Review, Petition for Stay, and Application for a federal court stay, and widespread concerns about the accuracy of the study area boundaries and the QRA's legal assumptions, methodology, application, accuracy, predictability, randomness, and appropriateness are resolved; *and be it further*

RESOLVED, The FCC should refer the consideration of whether to adopt any additional ICC and USF reforms to the USF Joint Board, other than the FCC's pending implementation of items already adopted by rule in the USF/ICC Transformation Order, in lieu of proceeding with present and further FNPRMs; *and be it further*

RESOLVED, The FCC should commit to USF support that is predictable, methodologically sound, and includes a prohibition of retroactive application of the Model; *and be it further*

RESOLVED, Congress is urged to support: 1) the suspension of the QRA Model implementation by the FCC until questions about its impact and appropriateness are resolved in collaboration with State commissions so as to dramatically reduce the difficulty in transitioning to a new form of reimbursement for capital and operating expenses for rate-of-return rural carriers that receive USF support; and (2) the referral of matters relating to adoption of any further ICC and USF reforms, other than pending implementation of items already adopted by rule in the USF/ICC Transformation Order, to the USF Joint Board.

Sponsored by the Committee on Telecommunications

Adopted by the NARUC Board of Directors July 25, 2012