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Date: May 7, 2014

To: Secretary's Office

From: Abdel Eqab

Re: Document to be Scanned in ECFS under WC Docket No. 96-45

The enclosed petition for Waiver was filed by paper on 2/24/2014. Until now, I do not see it electronically in ECFS. Can you please scan it into Docket No. 96-45 manually. It is for Penasco Valley Telephone Cooperative, INC. and Mescalero Apache Telecom, INC. Thank you

Filers

Please call me directly if you have any questions. Thank you very much.

Abdel Eqab
Electronics Engineer, WCB / TAPD
202-418-0863
Abdel-Hamid.Eqab@FCC.Gov

MAY 7 - 2014

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MARY SISAK
22-828-555F

96-45

Federal Communications Commission
Office of the Secretary

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE
FORM 159

Approved by OMB
3060-0589
Page No. 1 of 2

(1) LOCKBOX # 979091		SPECIAL USE ONLY	
		FCC USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Penasco Valley Telephone Cooperative, Inc.		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$7,990.00	
(4) STREET ADDRESS LINE NO. 1 4011 West Main			
(5) STREET ADDRESS LINE NO. 2			
(6) CITY Artesia		(7) STATE NM	(8) ZIP CODE 88210 9566
(9) DAYTIME TELEPHONE NUMBER (include area code) (575)748-1241		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0001618081		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME Penasco Valley Telephone Cooperative, Inc.			
(14) STREET ADDRESS LINE NO. 1 4011 West Main			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY Artesia		(17) STATE NM	(18) ZIP CODE 88210 9566
(19) DAYTIME TELEPHONE NUMBER (include area code) (575)748-1241		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0001618081		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE BEB	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$7,990.00	(27A) TOTAL FEE \$7,990.00	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>Roy Dale Laman</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE <u>Roy Dale Laman</u>		DATE <u>2/07/2014</u>	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
PEÑASCO VALLEY TELEPHONE COOPERATIVE, INC.))	
)	
and)	
)	
MESCALERO APACHE TELECOM, INC.)	CC Docket No. 96-45
)	
Joint Petition for Waiver of the Definition of "Study Area")	
Contained in Part 36, Appendix--Glossary of the)	
Commission's Rules)	
)	

JOINT PETITION FOR EXPEDITED WAIVER

Peñasco Valley Telephone Cooperative, Inc. (PVT) and Mescalero Apache Telecom, Inc. (MATI) (collectively, "Petitioners"), by their attorneys, hereby request waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the Commission's Rules. The purpose of this waiver is to allow PVT to remove approximately 450 acres of land in its Mayhill, New Mexico exchange, with zero (0) subscriber access lines, from its New Mexico study area and for MATI to add the approximately 450 acres of land to its New Mexico study area. The land at issue is within the boundary of the Mescalero Apache Reservation and the proposed waiver would allow MATI to provide service throughout the Reservation. Exhibit 1 identifies the area to be served by MATI.

The Commission is requested to review and approve this Petition or to allow it to go into effect, in accordance with Section 36.4 of the Commission's rules. No new issues of law are raised

by the Petition and the facts and circumstances supporting grant comply with the standard for waiver set out in the *USF/ICC Order*.¹

Background

PVT presently owns and operates local telephone exchanges in its New Mexico study area (study area code 492270), which comprises approximately 2,976,640 acres. This petition seeks approval for the removal of approximately 450 acres of land in PVT's Mayhill exchange, which is uninhabited and includes no access lines. The tract of land at issue, known as the "Tuton Area" or the "Elk Canyon Property," is located along the northern boundary of PVT's Mayhill Exchange and is within the boundary of the Mescalero Apache Reservation. PVT is an Issuing Carrier in the NECA interstate access tariffs. PVT receives settlements from NECA on an average schedule basis and it has never elected to operate pursuant to price cap regulation.

As authorized by the Commission in 2001,² MATI, a tribally-owned carrier, provides telecommunications services to consumers within the Mescalero exchange (study area code 491231), which is an area within the Mescalero Apache Reservation. MATI wishes to add the approximately 450 acres of land currently in the PVT Mayhill exchange and within the boundary of

¹ 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, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, 26 FCC Rcd 17663 (2011) (*USF/ICC Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

² In the Matter of Mescalero Apache Telecom, Inc., GTE Southwest Incorporated, and Valor Telecommunications of New Mexico, LLC; Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36, Appendix-Glossary of the Commission's Rules; Mescalero Apache Telecom, Inc.; Waiver of Sections 61.41(c)(2), 69.3(e)(11), 36.611, and 36.612 of the Commission's Rules, CC Docket No. 96-45, *Order*, 16 FCC Rcd 3813 (January 18, 2001) (*Mescalero Order*).

the Mescalero Apache Reservation, to its existing New Mexico study area, in order to be the incumbent local exchange carrier and to provide service throughout the reservation. MATI is an Issuing Carrier in the NECA interstate access tariffs. MATI receives settlements from NECA on an average schedule basis and it has never elected to operate pursuant to price cap regulation.

Waiver of the Study Area Definition is Warranted and in the Public Interest

Part 36 of the Commission's Rules "freezes" the definition of "study area" to the boundaries that were in existence on November 15, 1984.³ This "freeze" was due, in part, to the Commission's concern over the level of interstate cost recovery by LECs from the Universal Service Fund ("USF"): "[t]he Commission took that action, in part, to ensure that LECs do not set up high cost exchanges within their existing service territories as separate study areas to maximize high cost support."⁴

In the *USF/ICC Order*, the Commission established a two-prong test for deciding whether study area waivers should be granted. According to the Commission, the standards for evaluating petitions for study area waiver are:

- (1) the state commission having regulatory authority over the transferred exchanges does not object to the transfer and
- (2) the transfer must be in the public interest.⁵

The Commission further stated that the evaluation of the public interest benefits of the proposed waiver will include: "(1) the number of lines at issue; (2) the projected universal service fund cost per line; and (3) whether such a grant would result in consolidation of study areas that facilitates reductions in cost by taking advantage of the economies of scale, *i.e.*, reduction in cost per line due

³ See 47 CFR Part 36, Appendix—Glossary.

⁴ Eagle Decision, 10 FCC Rcd. At 1773 ¶ 10, citing In the Matter of MTS and WATS Market Structure Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 50 Fed. Reg. 939 (Jan. 8, 1985)

⁵ *USF/ICC Order* at 265.

to the increased number of lines."⁶ The Commission states, however, that these are guidelines "and not rigid measures for evaluating a petition for study area waiver."⁷

As demonstrated herein, the overall concern prompting the "freeze" in study areas is not an issue in this transaction, and the Commission's two-prong test has been satisfied. Accordingly, the Petitioners respectfully request that the Commission grant the study area waiver permitting: (1) PVT to remove approximately 450 acres from the Mayhill exchange within the boundary of the Mescalero Apache Reservation from its New Mexico study area; and (2) the affiliation of the approximately 450 acres within the boundary of the Mescalero Apache Reservation with MATI's existing New Mexico study area.

A. State Commission Approval

On March 13, 2013, PVT and MATI filed a Joint Petition with the New Mexico Public Regulation Commission (NMPRC), in which they asked the NMPRC to approve the transfer of the area in PVT's Mayhill Exchange from PVT to MATI and to realign the service area boundaries of the two companies. On November 26, 2013, the NMPRC approved the boundary realignment requested by PVT and MATI and found that it is in the public interest. A copy of the NMPRC's Order is attached.

B. The Public Interest Will Be Served By Grant Of The "Study Area" Waiver

As stated, there are no subscriber access lines currently located on the acreage that is the subject of this study area waiver and there also are no inhabitants or premises. Accordingly, grant of the waiver will not impact the projected universal service fund cost per line for either carrier.

Grant of the waiver also will provide MATI with the ability to provide service throughout the Mescalero Apache Reservation. As found by the NMPRC, "[s]ince there are no current or

⁶ *Id.*

⁷ *Id.*

prospective customers within the Tuton Area at this time, there would be no threat of discontinuance of service if the realignments are approved. Also, in the event a request for service is made by a consumer located within the Tuton Area at some time in the future after realignment, MATI will be in a position to respond and offer service."⁸

In addition, grant of the waiver is consistent with the Commission's statements concerning its obligations under the historic federal trust relationship between the federal government and federally-recognized Indian tribes "to encourage tribal sovereignty and self-governance and to ensure a standard of livability for members of Indian tribes on tribal lands."⁹ Accordingly, the proposed study area waiver will serve the public interest.

⁸ NMPRC Recommended Decision at 5.

⁹ *Mescalero Order* at ¶29.

Conclusion

For the reasons stated herein, Petitioners respectfully request that the Commission expeditiously review and approve this Petition or allow it to go into effect, in accordance with Section 36.4 of the Commission's rules. This Petition raises no new issues of law, is supported by precedent and the facts involved in this petition clearly demonstrate that the public interest will be served by such an expeditious grant.

Respectfully submitted,

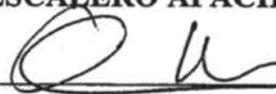
**PEÑASCO VALLEY TELEPHONE
COOPERATIVE, INC.**

By 
Mary J. Sisak

Blooston, Mordkofsky, Dickens, Duffy &
Prendergast, LLP
2120 L Street, NW, Suite 300
Washington, DC 20037
Tel: (202) 659-0830
Fax: (202) 828-5568

Dated: February 24, 2014

MESCALERO APACHE TELECOM, INC.

By  _____

Alan P. Morel
Alan P. Morel, P.A.
P. O. Box 1030
Ruidoso, NM 88355
Tel: (575) 257-3556
Fax: (575) 257-3558

Dated: 2-20-14

EXHIBIT 1



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE JOINT PETITION
OF PEÑASCO VALLEY TELEPHONE
COOPERATIVE, INC. AND MESCALERO
APACHE TELECOM, INC. FOR AUTHORITY
TO REALIGN SERVICE TERRITORY
BOUNDARIES**

) Case No. 13-00080-UT
)
)
)
)
)
)

FINAL ORDER ADOPTING RECOMMENDED DECISION

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission”) upon the Recommended Decision of the Hearing Examiner (“Recommended Decision”) issued by Ashley Schannauer on November 21, 2013. Having considered the Recommended Decision (a copy of which is attached hereto as Exhibit 1), and the record in this case, and being fully informed in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission has jurisdiction over the parties and the subject matter of this case.
2. The Statement of the Case, Discussion, and all Findings and Conclusions contained in the Recommended Decision are hereby incorporated by reference as if fully set forth in this Order, and are ADOPTED, APPROVED, and ACCEPTED as Findings and Conclusions of the Commission.
3. The Recommended Decision is well taken and should be adopted, accepted, and approved by the Commission.
4. Due and proper notice of this case has been provided.

IT IS THEREFORE ORDERED:

A. The Orders contained in the Recommended Decision as set forth in Exhibit 1 attached hereto are incorporated by reference as if fully set forth herein and are ADOPTED, APPROVED, and ACCEPTED as Orders of the Commission.

B. The Recommended Decision is ADOPTED, APPROVED and ACCEPTED in its entirety.

C. This Order is effective immediately.

D. Copies of this Order shall be e-mailed to all persons listed on the attached Certificate of Service whose e-mail addresses are known. Copies of this Order shall be mailed via regular mail to all other persons listed on the attached Certificate of Service.

E. This Docket is closed.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 26th
day of November, 2013.

NEW MEXICO PUBLIC REGULATION COMMISSION



Ben L. Hall

BEN L. HALL, CHAIRMAN

Valerie Espinoza

VALERIE ESPINOZA, VICE CHAIR

Karen L. Montoya

KAREN L. MONTOYA, COMMISSIONER

Patrick H. Lyons

PATRICK H. LYONS, COMMISSIONER

Theresa Becenti-Aguilar

THERESA BECENTI-AGUILAR, COMMISSIONER

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT PETITION OF)
PENASCO VALLEY TELEPHONE COOPERATIVE,)
INC. AND MESCALEROAPACHE TELECOM, INC.)
FOR AUTHORITY TO REALIGN SERVICE)
TERRITORY BOUNDARIES)

Case No. 13-00080-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Final Order Adopting Recommended Decision was sent today by electronic mail or by regular mail to the parties listed below.

William Templeman
Alan P. Morel

wtempleman@cmtisantafe.com;
apmpa@apmpa.com;

By regular mail

Penasco Valley Telephone Cooperative, Inc.
4011 W. Main
Artesia, NM 88210

Alan P. Morel, P.A.
P.O. Box 1030
Ruidoso, NM 88355-1030

Hand-delivered to:

Joan T. Ellis, Esq.
Staff Counsel
NMPRC - Legal Division
P.O. Box 1269/1120 Paseo de Peralta
Santa Fe, NM 87504

Hand-delivered to:

Lisa Adelman, Esq.
Associate General Counsel
NMPRC-Office of General Counsel
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Santa Fe, NM 87504

Hand-delivered to:

Eugene Evans
NMPRC-Utility Division
PO Box 1269/1120 Paseo de Peralta
Santa Fe, NM 87504

Hand-delivered to:

Michael Ripperger
NMPRC-Utility Division
PO Box 1269/1120 Paseo de Peralta
Santa Fe, NM 87504

DATED this 26th day of November, 2013.

NEW MEXICO PUBLIC REGULATION COMMISSION



Ana C. Kippenbrock, Paralegal

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE JOINT PETITION)
OF PENASCO VALLEY TELEPHONE)
COOPERATIVE, INC. AND MESCALERO)
APACHE TELECOM, INC. FOR AUTHORITY)
TO REALIGN SERVICE TERRITORY)
BOUNDARIES)**

Case No. 13-00080-UT



RECOMMENDED DECISION

November 21, 2013

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Ashley C. Schannauer, Hearing Examiner for this case, submits this Recommended Decision to the New Mexico Public Regulation Commission ("Commission") pursuant to NMSA 1978, Section 8-8-14, and PRC Rules of Procedure 1.2.2.29.D(4) and 1.2.2.37.B NMAC. The Hearing Examiner recommends that the Commission adopt the following statement of the case, discussion, findings of fact, conclusions of law and decretal paragraphs in its Final Order.

I. STATEMENT OF THE CASE

On March 13, 2013, Penasco Valley Telephone Cooperative, Inc. ("PVT") and Mescalero Apache Telecom, Inc. ("MATI") filed a Joint Petition to realign their service territory boundaries. PVT and MATI ask the Commission to approve the transfer of the "Tuton Area," also known as the "Elk Canyon Property," which is located along the northern boundary of PVT's Mayhill Exchange, from PVT to MATI. The Tuton Area is within the boundary of the Mescalero Apache Reservation, which is otherwise served by MATI.

On September 13, 2013, Staff of the Telecommunications Bureau of the Utility Division Staff ("Staff") filed a Response to the Petition. Staff recommended that, due to the complexity of the issues, the case should be assigned to a Hearing Examiner.

On September 25, 2013, the Commission issued an Initial Order initiating a proceeding for the purpose of considering the Joint Petition. The Order designated the undersigned as Hearing Examiner to preside over this matter and to take all action necessary and convenient thereto within the limits of the Hearing Examiner's authority, to conduct any necessary hearings and to take any other action in this case that is consistent with Commission procedure, including the issuance of such procedural and protective orders as the Hearing Examiner finds necessary, and the issuance of a Recommended Decision.

Pursuant to an order of the Hearing Examiner, a prehearing conference was held in this matter on October 7, 2013. Participating in the conference were representatives of PVT, MATI and Staff. At the prehearing conference, the Hearing Examiner and parties discussed a schedule to address the Joint Petition and certain issues that should be addressed by PVT and/or MATI in pre-filed testimony.

On October 8, 2013, the Hearing Examiner issued a Procedural Order that formalized the schedule discussed at the prehearing conference. The schedule set a deadline for intervention of November 8, 2013 in the event of any opposition and a tentative hearing date of November 21, 2013, which could be waived if no one, including Staff, filed to oppose the Joint Petition.

No motions to intervene were filed, and Staff filed testimony on November 15, 2013 supporting PVT's and MATI's Joint Petition.

The hearing tentatively scheduled for November 21 was vacated, and the Hearing Examiner has proceeded with this Recommended Decision.

II. DISCUSSION

Penasco Valley Telephone Cooperative, Inc. ("PVT") is a member-owned cooperative organized and existing under New Mexico law located in Artesia, New Mexico. PVT has been certificated by the Commission to provide telecommunications services to consumers within six exchange areas located in high cost rural areas of South-Central New Mexico. The six exchanges are known as Loco Hills, Cottonwood, Lakewood, Hope, Hondo and Mayhill. PVT is an incumbent rural telecommunications carrier as that term is defined in the New Mexico Rural Telecommunications Act, NMSA 1978, § 63-9H-1 et seq. Laman Direct, p. 1.

Mescalero Apache Telecom, Inc. ("MATI") is a tribally-owned entity certificated by the Commission to provide telecommunications services to consumers within the Mescalero

Exchange which is an area entirely within the Mescalero Apache Reservation located in a high cost rural area of South-Central New Mexico. Certain boundaries of PVT's Mayhill and Hondo exchanges are contiguous with the boundary of MATI's service area. MATI also is an incumbent rural telecommunications carrier under the Rural Telecommunications Act. Laman Direct, p. 1.

In his pre-filed testimony, Dale Laman, Vice President for Industry and Regulatory Affairs for PVT, states that, in August 2012, he was informed by PVT's regulatory consultants that documents generated by the FCC in connection with the FCC's USF reform proceedings revealed that there were Tribal Lands within the boundaries of PVT's service territory. Prior to this disclosure, PVT was not aware that there were Tribal Lands within its service territory.

Further investigation revealed that a tract of land known as the "Tuton Area," also known as the "Elk Canyon Property," which is located along the northern boundary of PVT's Mayhill Exchange is within the boundary of the Mescalero Apache Reservation. Laman Direct, p. 2. Through consultation with representatives from MATI, Mr. Laman confirmed that the Tuton Tract is indeed within the boundary of the Reservation. Mr. Laman also determined that MATI wishes to have the Tuton Area included within its service territory so that MATI is in a position to offer service throughout the Mescalero Apache Reservation. Mr. Laman determined that PVT does not have any customers or telecommunications facilities within the Tuton Area and that PVT wishes to coordinate with MATI to realign their service area boundaries so that PVT does not have any Tribal Lands within its service territory. Laman Direct, p. 2.

Based on this information, Mr. Laman asked PVT's attorney to consult with MATI and prepare and file a petition seeking the appropriate service territory boundary realignments.

Laman Direct, p. 2.

Mr. Laman confirmed that the Tuton Area is within the Mescalero Apache Reservation through consultations with MATI and the Tribe. MATI provided a map which, when compared with PVT's service territory maps, identifies the location of the Tuton Area within the Reservation boundary. The Tribe also provided a letter confirming that the location of the Tuton Area is within the Reservation. Copies of that letter and map were attached as Exhibit B and C to the Joint Petition. Laman Direct, p. 3.

Mr. Laman states that PVT was granted a Certificate of Public Convenience and Necessity by the State Corporation Commission in 1966. The designated service territory of the Cooperative was established at that time and has not changed. Maps were supplied to the Commission reflecting the service territory boundaries. Laman Direct, p. 3.

Mr. Laman states that MATI was granted a Certificate of Public Convenience and Necessity by the Public Regulation Commission and that its designated service territory was established through maps supplied to the Commission in connection with that certification process. Laman Direct, p. 3.

PVT reviewed its business records and confirmed that the Cooperative does not have any telecommunications facilities extending into the Tuton Area, that it does not have any current customers in the Area, that it has no record that it has ever served a customer within the Area, and that it has no record of a customer located in the Area ever requesting service. Laman Direct, pp. 3-4.

The Tuton Area is a remote, mountainous and forested area that covers approximately 450 acres. Mr. Laman states that there are no state or county roads into or across the Area. Mr. Laman states that, while he has not personally traveled through the entire Tuton Area, MATI personnel have informed him that MATI is not aware of any current residents or businesses

within the Area and has never been approached about serving a customer within the Area. PVT employees also have advised that they are not aware of any current residents. PVT has not received any requests for service from anyone within the Tuton Area. Laman Direct, p. 4.

Mr. Laman states that it is his understanding that the Commission's authority to approve the proposed boundary realignments stems from the status of PVT and MATI, as incumbent rural telecommunications carriers that are both regulated under the provisions of the New Mexico Rural Telecommunications Act. His understanding is that Section 63-9H-5 of that Act permits the Commission to amend certificates of public convenience and necessity such as those issued to PVT and MATI, including realignment of the service territories designated in connection with issuance of the certificates, upon request of the certificated carriers, so long as the Commission determines that such an amendment is consistent with the public interest.

Laman Direct, pp. 4-5.

Mr. Laman states that the public interest would be served if the Joint Petition is granted and the proposed boundary realignments are approved. Since there are no current or prospective customers within the Tuton Area at this time, there would be no threat of discontinuance of service if the realignments are approved. Also, in the event a request for service is made by a consumer located within the Tuton Area at some time in the future after realignment, MATI will be in a position to respond and offer service. Since there are no facilities or customers within the Area, the proposed alignment will have no effect on the amount of federal or state universal service fund support received by either PVT or MATI. In sum, since PVT and MATI both wish to accomplish the proposed realignments and no current or future customers will be adversely affected, he states that the public interest will be served if the proposed realignments are approved. Laman Direct, p. 5.

Mr. Laman states that he is generally familiar with the pending Application of a PVT affiliate, Fuego Wireless, LLC (docketed at Case No. 13-00040-UT), for conditional Commission designation as an eligible telecommunications carrier ("ETC") for the purpose of establishing eligibility for and participation in the upcoming Federal Communication Commission ("FCC") Mobility Fund Phase II auction. Mr. Laman stated that the Fuego case and the boundary realignment case are not related in any respect. Fuego's application expressly excludes Tribal Lands from the geographic area it requests for ETC designation. Since the Tuton Area is within the Mescalero Reservation and, therefore, is Tribal Land, it will not be included in any ETC designation for Fuego regardless of whether it is within PVT's service territory or MATI's service territory. The results of the PVT/MATI Petition will have no impact on the Fuego case and the Fuego Application will have no impact on this case. Laman Direct, pp. 5-6.

Mr. Laman states that, if the Commission approves the proposed boundary realignments, PVT and MATI intend to submit a copy of the Commission's Final Order in this case with a Joint Petition to the FCC seeking waivers to modify their study areas to correspond with the realignments. The FCC maintains information about service territories of rural local exchange carriers, referred to as study areas," for purposes of considering and allocating federal universal service fund support and other federal regulatory reasons. The FCC also tracks locations of Tribal Lands in order to determine applicability of FCC rules governing requirements for engagement by carriers with Tribes regarding broadband expansion and other issues involving telecommunications services on Tribal Lands. Approval by this Commission is a precondition for study area waivers at the FCC. Since there are no customers involved, there will be no impact on federal universal service support determinations. The only material change in federal regulatory requirements occurring from the FCC study area waiver would be to relieve PVT of

any obligation under the Tribal engagement regulations because PVT would no longer have Tribal Lands within its service territory. Laman Direct, pp. 6-7.

Mr. Laman states that it is his understanding that, in evaluating a petition for a study area waiver, the FCC will require that the state commission having regulatory authority over the service territories does not object to the transfer. Therefore, PVT and MATI request that the Commission not only affirmatively approve the Joint Petition and find that the boundary realignment is in the public interest, but that it also make a finding that this Commission has regulatory authority over the proposed service territory boundary realignments and does not object to the realignments. Laman Direct, p. 7.

In response to requests for further information made by Staff, Mr. Laman provided in supplemental testimony a copy of the Certificate of Public Convenience and Necessity issued to PVT by the State Corporation Commission and a copy of a map of PVT's current service territory. Laman Supp., Exhibits DL-1 and DL-2.

Mr. Laman also provided a citation to the FCC's Order setting forth requirements for obtaining study area waivers from the FCC. He said the FCC's standards for evaluating petitions for study area waivers are set forth in paragraph 265 of the FCC's USF/ICC Order, which may be cited as follows: *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, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, 26 FCC Rcd

17663, 17819, para. 265 (2011) (USF/ICC Transformation Order), *pets. for review pending sub nom.* In re: FCC 11-161, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

Mr. Laman further provided a citation to the FCC's Order setting forth requirements that carriers that provide service to customers on Tribal Lands engage in discussion with tribes regarding broadband expansion and other issues involving telecommunication services on Tribal Lands. The Tribal engagement requirements are addressed in the FCC's USF/ICC Transformation Order, which may be cited as follows: *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663 at 17868-69, para. 637 (2011) (USF/ICC Transformation Order); *pets. for review pending sub nom.* In re FCC 11-161, No. 11-9900 (10th Cir. filed December 18, 2011).

Fourth, Mr. Laman expanded on the discussion in his Direct Testimony at page 2 regarding the circumstances that caused PVT and MATI to file their Joint Petition. He said he has determined that the Cooperative's outside consultants became aware that there were Mescalero Reservation lands within PVT's service territory when they were so informed by the FCC in 2012 in connection with the FCC's quantile regression analysis. Because this revelation implicated the FCC's then-new Tribal engagement requirements, the consultants notified PVT. Mr. Laman then reached out to MATI to discuss what, if any, action was appropriate. Through those discussions with MATI it was decided to proceed with the Joint Petition that initiated this case. He said he does not have any more information regarding the manner by which the FCC identified Tribal Lands within PVT's service area for purposes of its regression analysis.

Fifth, Mr. Laman provided a copy of the Warranty Deed that transferred the "Tuton Area" to the Mescalero Apache Tribe. He included a copy of that deed, which sets forth a legal description of the property in issue, as Exhibit DL-3 to his supplemental testimony.