

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

In the Matter of )
Connect America Fund ) WC Docket No. 10-90
Developing a Unified Intercarrier Compensation )
Regime ) CC Docket No. 01-92
Sunflower Enterprises, Inc. Petition for Waiver of )
Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) ) WC Docket No. 19-90
of the Commission's Rules to modify access rate )
bands and charges, and 2011 Base Period Revenue )
in connection with merger of affiliated study areas )
in Mississippi )
Lakeland Communications Group, LLC Petition )
for Waiver of Sections 51.909(a), 51.917(b)(1) ) WC Docket No. 19-103
and 51.917(b)(7) of the Commission's Rules to )
modify access rate bands and charges, and 2011 )
Base Period Revenue in connection with merger )
of affiliated study areas in Wisconsin )

ORDER

Adopted: October 28, 2019

Released: October 28, 2019

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, consistent with precedent,<sup>1</sup> we grant the petitions filed by Sunflower Enterprises, Inc. (Sunflower)<sup>2</sup> and Lakeland Communications Group, LLC (Lakeland) (collectively

1 See e.g., Petition of Butler-Bremer Mutual Telephone Company, Inc. for a Waiver of Sections 51.909(a), 51.917(b)(1), and 51.917(b)(7) of the Commission's Rules to Modify Access Rate Bands and Charges, and 2011 Switched Access Revenue in Connection with Merger of Affiliated Study Areas in Iowa; Petition of Panora Communications Cooperative and Prairie Telephone Company, Inc. for Waiver of Sections 51.909(a), 51.917(b)(1), 51.917(b)(2), and 51.917(b)(7) of the Commission's Rules to Modify Access Rate Bands and Charges, and 2011 Switched Access Revenue Requirement and 2011 Base Period Revenue in Connection with Study Area Waivers in Iowa, WC Docket Nos. 10-90, 15-118, and 15-166; CC Docket No. 01-92, Order, 33 FCC Red 1152, 1157-58, paras. 15-16 (WCB 2018) (Butler-Panora Order) (outlining and applying relevant Commission precedent to approve the merger of two rate-of-return study area waiver petitions); Joint Petition of Price Cap Holding Companies for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief; Consolidated Communications Companies Tariff F.C.C. No. 2; Frontier Telephone Companies Tariff F.C.C. No. 10; Windstream Telephone System Tariff F.C.C. No. 7, WC Docket No. 12-63, Order, 27 FCC Red 15753 (2012) (2012 Average Schedule Conversion Order) (approving a methodology for establishing initial interstate switched and special access rates for the study areas in new tariff filings in order to allow the requesting carriers to operate more efficiently post waiver); CenturyLink Petition for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 14-23, Order, 29 FCC Red 5140, 5146, para. 15 (WCB 2014) (allowing CenturyLink to establish a single interstate access tariff with blended switched and special access

(continued....)

Petitioners),<sup>3</sup> seeking waivers of certain of the Commission's intercarrier compensation rules to allow them to merge existing study areas.<sup>4</sup> Based on the record before us, we find that grant of the unopposed waivers will serve the public interest by promoting increased productivity and efficiencies that result in cost savings for the companies, which will in turn benefit consumers by encouraging the companies to invest in broadband deployment.

## II. BACKGROUND

### A. Intercarrier Compensation Reform

2. In the *USF/ICC Transformation Order*,<sup>5</sup> the Commission capped reciprocal compensation and interstate switched access rates and most intrastate switched access rates at the rates in effect on December 29, 2011.<sup>6</sup> In that same order, the Commission adopted a multi-year process for reducing most terminating switched access rates to bill-and-keep.<sup>7</sup> The Commission adopted a transitional revenue recovery mechanism that allows incumbent local exchange carriers (LECs) to recover a portion of the intercarrier compensation revenues lost due to the Commission's reforms, up to an amount defined for each year of the incumbent LEC's transition.<sup>8</sup> These defined amounts are referred to as "Eligible Recovery."<sup>9</sup> An incumbent LEC may recover its Eligible Recovery each year from its end users through an Access Recovery Charge, subject to an annual cap.<sup>10</sup> If the projected Access Recovery Charge revenues are not sufficient to cover the entire Eligible Recovery amount, the carrier may elect to collect the remainder in Connect America Fund–Intercarrier Compensation support.<sup>11</sup>

3. The Petitioners are rate-of-return LECs that participate in the National Exchange Carrier Association (NECA) traffic-sensitive tariff. The calculation of a rate-of-return LEC's Eligible Recovery begins with its Base Period Revenue.<sup>12</sup> A rate-of-return carrier's Base Period Revenue is the sum of certain intrastate switched access revenues and net reciprocal compensation revenues received by March 31, 2012, for services provided during Fiscal Year (FY) 2011,<sup>13</sup> and the projected revenue requirement for

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rates for three consolidating study areas and simultaneously allowing the three affiliates requesting the waiver to withdraw from the NECA pool).

<sup>2</sup> See Sunflower Enterprises, Inc. Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in Mississippi, WC Docket No. 19-90 (filed Mar. 27, 2019) (Sunflower Petition).

<sup>3</sup> Lakeland Communications Group, LLC Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in Wisconsin, WC Docket No. 19-103 (filed Apr. 15, 2019) (Lakeland Petition).

<sup>4</sup> A study area is the geographic territory of an incumbent local exchange carrier's telephone operations. See 47 CFR Part 36 App; *US West Communications, Inc. & Eagle Telecommunications, Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix—Glossary of the Commission's Rules*, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1772, para. 5 (1995).

<sup>5</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*) *aff'd*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>6</sup> See 47 CFR § 51.909(a). Originating intrastate switched access rates for rate-of-return carriers were exempt from the rate cap.

<sup>7</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-36, para. 801 & fig. 9.

<sup>8</sup> See *id.* at 17956, para. 847.

<sup>9</sup> *Id.* at 17957, para. 850.

interstate switched access services for the 2011-2012 tariff period.<sup>14</sup> The Base Period Revenue for rate-of-return carriers was reduced by 5% initially and is reduced by an additional 5% in each year of the transition.<sup>15</sup> A rate-of-return LEC's Eligible Recovery is equal to the adjusted Base Period Revenue for the year in question, less, for each relevant year of the transition, the sum of (1) projected intrastate switched access revenue;<sup>16</sup> (2) projected interstate switched access revenue; and (3) projected net reciprocal compensation revenue.<sup>17</sup> A rate-of-return LEC's Base Period Revenue is calculated only once, but is used during each step of the intercarrier compensation recovery mechanism calculations for each year of the transition.<sup>18</sup>

4. The Commission's rules for calculating Eligible Recovery are based on study-area-specific data, and do not address what adjustments may be necessary when study areas are merged after one company acquires another with a separate study area. Because a carrier's Base Period Revenue and interstate revenue requirement are study-area-specific, combining two study areas requires a decision about how best to combine two different Base Period Revenues and interstate revenue requirements, and a waiver of the Commission's rules governing Base Period Revenue calculation and interstate revenue requirements.

### **B. Petitioners' Requests**

5. Sunflower seeks a waiver of the Commission's rules, as necessary, to allow it to merge two commonly-owned study areas in Mississippi.<sup>19</sup> Sledge Telephone Company (Sledge) and Lakeside Telephone Company, Inc. (Lakeside) are wholly-owned subsidiaries of Sunflower and they "will merge effective January 1, 2020, with Sledge as the surviving entity."<sup>20</sup> Both are cost companies<sup>21</sup> that receive legacy Universal Service Fund support, rather than model-based support.<sup>22</sup> Upon merger, Sunflower seeks to tariff rates for the merged entity in Rate Band 10 for Dedicated Transport Service and Rate Band 1 for Tandem Switching Service.<sup>23</sup> Local Switching Service will remain in Rate Band 8 for the merged study area.<sup>24</sup> Sunflower also seeks a waiver to combine the 2011 interstate access revenue requirements

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<sup>10</sup> *Id.* at 17958-61, para. 852; 47 CFR §§ 51.917(d)-(e).

<sup>11</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17994-95, para. 918; 47 CFR § 51.917(f).

<sup>12</sup> *See* 47 CFR § 51.917(b)(7).

<sup>13</sup> For purposes of the recovery mechanism, FY 2011 is defined as Oct. 1, 2010 through Sept. 30, 2011. *See* 47 CFR § 51.903(e).

<sup>14</sup> *See* 47 CFR § 51.917(b)(7). The 2011-2012 tariff period was July 1, 2011 through June 30, 2012.

<sup>15</sup> *See* 47 CFR § 51.917(b)(3).

<sup>16</sup> The carrier would reflect forward any required true-ups resulting from the operation of the pre-merger study areas in the proper year for the merged study area. *See e.g.*, 47 CFR §§ 51.915(b)(13); 51.917(b)(6).

<sup>17</sup> *See* 47 CFR § 51.917(d).

<sup>18</sup> *Id.*

<sup>19</sup> Sunflower Petition at 1-2. The rules at issue can be found at 47 CFR §§ 51.909(a), 51.917(b)(1), and 51.917(b)(7).

<sup>20</sup> Sunflower Petition at 1-2.

<sup>21</sup> *2012 Average Schedule Conversion Order*, 27 FCC Rcd at 15754, para. 2 n.5 ("A cost company is a rate-of-return carrier that determines its rates based on its own costs, as opposed to determining its costs based on average schedule formulas. By contrast, an average schedule company is a rate-of-return company that determines its costs based on formulas approved by the Commission that are designed to produce disbursements that would be received based on the costs of a company that is representative of average schedule companies." (internal citations omitted)).

<sup>22</sup> Sunflower Petition at 2.

of the merging study areas and to combine the Base Period Revenues into a single Base Period Revenue for the merged study area.<sup>25</sup>

6. Lakeland seeks a waiver of the Commission's rules, as necessary,<sup>26</sup> in conjunction with a merger of two commonly-owned study areas—the Luck study area code (Luck SAC) and the Milltown study area code (Milltown SAC)—in Wisconsin that are “administered as cost companies receiving legacy support.”<sup>27</sup> Lakeland seeks a waiver to allow it to tariff rates in Rate Band 9 for Dedicated Transport Service and Rate Band 2 for Local Switching Service for the merged study area.<sup>28</sup> Tandem Switching Service will remain in Rate Band 1 for the merged study area.<sup>29</sup> Lakeland also seeks to combine the 2011 interstate access revenue requirements of the merging study areas and to combine the Base Period Revenues for the two study areas into a single Base Period Revenue for the newly merged study area.<sup>30</sup>

7. Earlier this year, we issued public notices seeking comment on the Lakeland and Sunflower petitions.<sup>31</sup> No comments were filed in response to those public notices.

### III. COMMISSION PRECEDENT RELATED TO MERGING STUDY AREA WAIVERS

8. Generally, the Commission's rules may be waived for good cause shown.<sup>32</sup> The Commission may exercise its discretion to waive a rule where the specific facts make strict compliance inconsistent with the public interest.<sup>33</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.<sup>34</sup>

9. In the interest of efficiency and where warranted based on the specific record in each case, the Wireline Competition Bureau (Bureau) has facilitated the merging of study areas by granting waivers of sections 51.917(b)(1) and 51.917(b)(7) of the rules to allow carriers to add together the relevant interstate revenues from FY 2011 of the merging study areas and the 2011-2012 interstate

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<sup>23</sup> *Id.* at Exh. A. The Lakeside study area is in Rate Band 10 for Dedicated Transport Service, and Rate Band 1 for Tandem Switching Service. The Sledge study area is in Rate Band 9 for Dedicated Transport Service, and Rate Band 2 for Tandem Switching Service. *Id.*

<sup>24</sup> *Id.* The Lakeside study area is in Rate Band 8 for Local Switching Service. The Sledge study area is in Rate Band 8 for Local Switching Service. *Id.* Sunflower argues that the overall impact of the consolidation on switched access revenue is minimal and offset by public interest benefits. *Id.* at 5.

<sup>25</sup> *Id.* at 3-4.

<sup>26</sup> The rules at issue can be found at 47 CFR §§ 51.909(a), 51.917(b)(1), and 51.917(b)(7).

<sup>27</sup> Lakeland Petition at 1-2. “Luck Telephone Company and Milltown Mutual Telephone Company (‘Lakeland ILECs’), each independently formed in 1908, have been under common ownership since 1997. In 1997, the Lakeland ILECs merged under the Lakeland Communications, Inc. holding company. Lakeland’s operating companies merged their legal entities in 2013 with Luck Telephone Company as the surviving company and the entity name was changed to Lakeland Communications Group, LLC. However, the Luck SAC and Milltown SAC have remained as separate study areas since 1997.” *Id.* at 2.

<sup>28</sup> *Id.* at Exh. A. The Luck study area is in Rate Band 1 for Local Switching Service, and Rate Band 8 for Dedicated Transport Service. The Milltown study area is in Rate Band 4 for Local Switching Service, and Rate Band 10 for Dedicated Transport Service. *Id.*

<sup>29</sup> *Id.* The Luck study area is in Rate Band 1 for Tandem Switching Service. The Milltown study area is in Rate Band 1 for Tandem Switching Service. *Id.*

<sup>30</sup> *Id.* at 3.

<sup>31</sup> See *Wireline Competition Bureau Seeks Comment on Sunflower Enterprises, Inc. Petition for Waiver of Commission Rules in Order to Merge Study Areas and Modify 2011 Revenue Requirement and Base Period*

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revenue requirement of the merging study areas.<sup>35</sup> This calculation creates a combined Base Period Revenue which serves as the baseline for calculating the Eligible Recovery of the company serving the combined study area going forward.<sup>36</sup>

10. The Commission has also used the waiver process to adjust the interstate switched access rate element(s) that the company requesting to merge study areas may assess. To facilitate such mergers for entities that do not participate in the NECA traffic-sensitive tariff, the Commission has waived the rate cap requirement in section 51.909(a) of the rules to allow the requesting carriers to develop a weighted composite rate.<sup>37</sup> Such a waiver allows some previously capped rates to increase, while other rates are reduced.<sup>38</sup> The new, weighted composite rate then becomes the rate cap for the rate element(s) in question.<sup>39</sup> To facilitate mergers for entities that participate in the NECA traffic-sensitive tariff, the Bureau has granted waivers of section 51.909(a) of the rules to allow NECA to place the consolidated study area in the rate band that most closely approximates the merged entities' cost characteristics.<sup>40</sup> The rate for that rate band then becomes the rate cap for that rate element in the merged study area.

#### IV. DISCUSSION

11. The Commission's precedent supports waiver of our rules to allow merging the study areas in question. Petitioners each assert that grant of their petitions will serve the public interest by allowing increased "administrative and operational efficiencies" because the companies will no longer be required to maintain separate books and conduct other regulatory requirements for two study areas.<sup>41</sup> We find that the efficiencies that arise from operating the merged study areas constitute special circumstances

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*Revenue*, Public Notice, DA 19-244, WC Docket. No. 19-90 (WCB Apr. 2, 2019); *Wireline Competition Bureau Seeks Comment on Lakeland Communications Group, LLC Petition for Waiver of Commission Rules in Order to Merge Study Areas and Modify 2011 Revenue Requirement and Base Period Revenue*, Public Notice, DA 19-312, WC Docket. No. 19-103 (WCB Apr. 22, 2019).

<sup>32</sup> 47 CFR § 1.3.

<sup>33</sup> *Northeast Cellular Telephone Co. L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>34</sup> The Commission may, on an individual basis, take into account considerations of hardship, equity, or more effective implementation of overall policy. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>35</sup> See e.g., *Butler-Panora Order*, 33 FCC Rcd at 1157, para. 15; *Titonka Telephone Company and The Burt Telephone Company Petition for Waiver of Sections 51.917(b)(1) and 51.917(b)(7) of the Communications Rules to modify 2011 Base Period Revenue in connection with the merger of affiliated study areas in Iowa*; *Interstate Telecommunications Cooperative, Inc., Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in South Dakota*; *Northeast Nebraska Telephone Company Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in Nebraska*, WC Docket Nos. 10-90, 18-69, 18-331, and 19-31; CC Docket No. 01-92, Order, DA 19-542 (WCB June 10, 2019) (*Titonka-ITC-Northeast Order*); see also *Joint Petition for Waiver of the Definition of "Study Area" or the Appendix-Glossary of Part 36 of the Commission's Rules filed by Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications*; *Winnebago Cooperative Telecom Association*, WC Docket No. 10-90, CC Docket No. 96-45, Order, 31 FCC Rcd 10683, 10691, para. 27 (WCB 2016) (approving the allocation of Base Period Revenue amounts using a simple average of the access line count for FY 2011 when only a portion of a study area is involved).

<sup>36</sup> See *Butler-Panora Order*, 33 FCC Rcd at 1157, para. 15.

<sup>37</sup> *2012 Average Schedule Conversion Order*, 27 FCC Rcd at 15764, para. 32.

<sup>38</sup> See *Butler-Panora Order*, 33 FCC Rcd at 1157-58, para. 16.

<sup>39</sup> *Id.*; 47 CFR § 51.909(a).

that warrant a deviation from the general rule, and good cause exists to grant the petitions for waiver filed by Sunflower and Lakeland. First, in each case, combining the merging carriers' Base Period Revenues and separately combining the merging carriers' interstate revenue requirements reflect the merging of the carriers' operations into a single operation and therefore is the appropriate base from which to begin calculating Eligible Recovery for the newly merged entities. The use of the combined Base Period Revenues of the merging study areas and the projected switched access revenues of the merging entities that will be subtracted from the Base Period Revenue of the merged study area will maintain the appropriate relationship between the components (Base Period Revenue and projected revenues) used in calculating the Eligible Recovery of the merged entity.

12. Second, as participants in the NECA traffic-sensitive tariff, the merged carriers' local switching, dedicated transport, and tandem switching rates in the merging study areas will be included in rate bands reflecting comparable cost groupings, per section 51.909(a) of the rules.<sup>42</sup> Each of the combined carriers must charge a single rate for each rate element. The combined operation of the merged carriers produces a cost characteristic of the newly merged entities that may warrant one or more rates being included in different rate bands after the mergers.

13. For both Sunflower and Lakeland, the rate band changes resulting from each respective merger will result in some traffic being assessed at a higher rate, while other traffic will be assessed at a lower rate than it was prior to the merger.<sup>43</sup> We find the proposed rate band assignments to be reasonable.<sup>44</sup> This banding process is the pooling equivalent of composite rate development approved in the *2012 Average Schedule Conversion Order*.<sup>45</sup> The new rates for Sunflower and Lakeland will become the rate caps for the affected rate elements. We recognize that, depending on the traffic mix, this may alter slightly the relative recovery between access revenues and Connect America Fund – Intercarrier Compensation support for Petitioners. We find these minimal differences to be more than offset by the public interest benefits of efficiencies gained from implementation of the merger of Sunflower's study areas and the merger of Lakeland's study areas. We agree with Petitioners that the mergers will serve the public interest<sup>46</sup> by producing significant administrative cost savings and facilitating the Commission's goal of encouraging carriers to become more efficient and to increase productivity,<sup>47</sup> which will facilitate increased investment in broadband deployment.

14. Grant of the Sunflower Petition will become effective upon the date of the merger of Lakeside and Sledge.<sup>48</sup> Grant of the Lakeland Petition will be effective upon the date of the merger of Luck SAC and Milltown SAC.<sup>49</sup>

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<sup>40</sup> See, e.g., *Butler-Panora Order*, 33 FCC Rcd at 1157-58, para. 16; *Titonka-ITC-Northeast Order*, at 5-6, para. 10.

<sup>41</sup> Sunflower Petition at 4-5; Lakeland Petition at 4-5.

<sup>42</sup> *2012 Average Schedule Conversion Order*, 27 FCC Rcd at 15765, para. 33; 47 CFR § 51.909(a).

<sup>43</sup> The use of a composite rate also involves some traffic being assessed a higher rate, while some traffic has lower rates. *2012 Average Schedule Conversion Order*, 27 FCC Rcd at 15764, para. 32.

<sup>44</sup> See *supra* paras. 5-6.

<sup>45</sup> *Butler-Panora Order*, 33 FCC Rcd at 1157-58, para. 16; *Titonka-ITC-Northeast Order*, at 7, para. 13.

<sup>46</sup> See Sunflower Petition at 4-5; Lakeland Petition at 4-5.

<sup>47</sup> See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17984-85, para. 902.

<sup>48</sup> "Lakeside and Sledge will merge effective January 1, 2020, with Sledge as the surviving entity." Sunflower Petition at 2.

<sup>49</sup> "To allow Lakeland the efficiency of managing switched access and CAF-ICC compliance for a single study area, [Lakeland] plans to merge the Luck SAC and the Milltown SAC into a single study area—the Luck SAC 330902—effective January 1, 2020." Lakeland Petition at 2-3.

**V. ORDERING CLAUSES**

15. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 5, 201-203 and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 201-203, 254(g), and sections 0.91, 0.291 and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that the Petition for Waiver filed by Sunflower Enterprises, Inc., on March 27, 2019 IS GRANTED AS PROVIDED HEREIN.

16. IT IS FURTHER ORDERED, pursuant to sections 4(i), 5, 201-203 and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 201-203, 254(g), and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that the Petition for Waiver filed by Lakeland Communications Group, LLC on April 15, 2019 IS GRANTED AS PROVIDED HEREIN.

17. IT IS FURTHER ORDERED that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau