

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

**APPLICATION FOR REVIEW**

Pursuant to 47 C.F.R. § 1.115 of the Federal Communications Commission’s (“Commission”) rules,<sup>1</sup> Bloomingdale Telephone Company (“Bloomingdale”) hereby submits this application for review and respectfully requests that the Commission reverse the August 5, 2020 decision of the Wireline Competition Bureau (“Bureau”) to reject Bloomingdale’s *Joint Petition*,<sup>2</sup> requesting waiver only for the March 1, 2019 deadline to upload and certify geocoded location information data with the Universal Service Administrative Company (“USAC”) through the High Cost Universal Broadband (“HUBB”) portal<sup>3</sup> and only to the extent Bloomingdale had to certify that it had no new locations to report, and deny the requested relief.<sup>4</sup> In its *HUBB Waiver Denial Order*, the Bureau denied two petitions requesting waiver of the

---

<sup>1</sup> 47 C.F.R. § 1.115.

<sup>2</sup> See ComSouth Corporation and Bloomingdale Telephone Company Emergency Request for Expedited Treatment Petition for Waiver, WC Docket No. 10-90, et al., CC Docket No. 01-92 (filed Apr. 21, 2020), <https://ecfsapi.fcc.gov/file/1042129184437/FINAL%20HUBB%20Waiver%20-%20ComSouth%20and%20Bloomingdale.pdf> (*Joint Petition*).

<sup>3</sup> 47 C.F.R. § 54.316(c)(1).

<sup>4</sup> See *In the Matter of Connect America Fund et. al.*, WC Docket No. 10-90 et al. Order., DA 20-837, (Aug 5, 2020) (*HUBB Waiver Denial Order*).

March 1, 2019 deadline to upload and certify geocoded location information data into USAC's HUBB portal because the geocoded location information data was untimely uploaded and/or certified.<sup>5</sup> Included in these two petitions was Bloomingdale's *Joint Petition*. In denying Bloomingdale's *Joint Petition*, the Bureau concluded that Bloomingdale failed to demonstrate good cause for their requested relief (i.e., a waiver of the March 1, 2019 deadline and high-cost universal service support restored) because its claim of good cause, essentially, amounted to nothing more than "inadvertent oversight, internal ETC confusion or problems resulting from utilizing third party services to produce the required data"<sup>6</sup> – all of which do not warrant waiver of the strict filing deadlines imposed for the certifications adopted in the 2011 USF/ICC Transformation Order – and Bloomingdale was not facing "the unique situation of having both new reporting requirements and a new method through which to report geocoded location information data."<sup>7</sup>

As explained herein, the Commission should reverse the Bureau's *HUBB Waiver Denial Order* because (a) the Bureau's denial of Bloomingdale's *Joint Petition* involves a question of law or policy which has not been previously resolved by the Commission; (b) the Bureau made an erroneous finding in concluding that Bloomingdale should have known what the reduction of support would be based on the number of days it filed after the March 1, 2019 deadline; and (c) the Bureau's denial of Bloomingdale's *Joint Petition* is inconsistent with its precedent of waiving its March 1 deadline for HUBB filings. It was therefore inappropriate for the Bureau to find that Bloomingdale failed to demonstrate good cause to waive Section 54.316(c)(1) of the Commission's rules<sup>8</sup> and deny its *Joint Petition*. Bloomingdale respectfully requests that the

---

<sup>5</sup> Id.

<sup>6</sup> Id. at para. 8.

<sup>7</sup> Id. at paras. 8 – 9.

<sup>8</sup> 47 C.F.R. § 54.316(c)(1).

Commission reverse the Bureau’s decision in the *HUBB Waiver Denial Order* and grant Bloomingdale a waiver of Section 54.316(c)(1) of the Commission’s rules<sup>9</sup> and restore its high-cost universal service support. Finally, nothing in federal law precludes the Commission from granting Bloomingdale the relief requested.

## I. BACKGROUND

On March 21, 2019, Bloomingdale was notified that it had erred in failing to certify that it had no newly deployed locations in 2018 in USAC’S HUBB portal by the March 1, 2019 deadline (“Second-Ever HUBB Filing”). Upon receiving this notice, Bloomingdale immediately certified that it had no new locations to report within its study area. However, the result of Bloomingdale’s error was that a total of \$62,223 out of \$71,440 of legacy support was withheld in February of 2020.<sup>10</sup> Bloomingdale filed its *Joint Petition* with the Bureau on April 21, 2020.

In its *Joint Petition*, Bloomingdale argued that good cause exists to warrant a waiver only for the HUBB report due March 1, 2019 and only to the extent it had to certify that it had no new locations to report because (i) the Bureau granted several petitions to waive the March 1, 2018 filing deadline for geocoded location information data for locations deployed in 2017 (“First-Ever HUBB Filing”) where filers had successfully uploaded the necessary geocoded location information data to the HUBB and certified the locations to which it had deployed broadband service in the previous year, prior to the deadline, but failed to certify that they had no new locations to report<sup>11</sup>; (ii) similar

---

<sup>9</sup> Id.

<sup>10</sup> The amount of the penalty is calculated based on the support Bloomingdale has received in 2020. Based on the amount of support Bloomingdale has received in 2020, Bloomingdale’s support reduction is \$45,091 and its support penalty is \$16,123 which result in a total penalty and reduction of support of \$62,223. Had the reduction in support been based on the amount of support Bloomingdale was receiving in 2019, when the late filing occurred, the total penalty and reduction in support would have only been \$35,979, since the reduction in support would have been \$26,651 and the support penalty would have been \$9,328. The increase in support amounts from 2019 to 2020 is directly tied to Bloomingdale’s increase in investment due to its working on a Fiber to the Home project in its ILEC area. Accordingly, Bloomingdale’s support reduction and penalty were much larger in 2020.

<sup>11</sup> See, generally, *In the Matter of Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, WC Docket No. 08-71 et al., Order, 34 FCC Rcd 11139 (Dec. 2, 2019) (*December HUBB Waiver Order*).

confusion and ambiguous guidance that plagued the First-Ever HUBB Filing continued to be an issue during the Second-Ever HUBB Filing; (iii) Bloomingdale timely inputted all of its geocoded location data prior to the March 1, 2018 deadline; (iv) Bloomingdale did not have new geocoded location information data to report to the HUBB for the March 1, 2019 filing because it did not deploy broadband to any new locations during that year; (v) as soon as Bloomingdale was notified, on March 21, 2019, of the certification error, it took immediate action to remedy the situation by going into the HUBB portal and making the necessary certification; (vi) since the error occurred, Bloomingdale has taken action and set up internal controls to prevent this one-time error from recurring; (vii) Bloomingdale's delay in making the necessary certification did not in any way impede the Bureau's ability to monitor broadband deployment since Bloomingdale's geocoded location data was successfully uploaded into the HUBB portal prior to the March 1, 2019 deadline and (viii) as a small rate-of-return carrier that serves a very rural area of Michigan and relies on universal service funding, absent a waiver and the restoring of its high-cost universal service support, Bloomingdale will not have enough funding and resources to deploy and maintain its networks and provide customers with sufficient broadband given that it was forced to quickly adjust its broadband deployment planning for the year to determine how to make up for the shortfall in support and has since seen further reductions in revenue stemming from steps taken to help customers stay afloat during the unprecedented COVID-19 pandemic.

## **II. DISCUSSION**

- a. The Bureau's Denial of Bloomingdale's *Joint Petition* involves a question of law or policy which has not been previously resolved by the Commission.

In its *HUBB Waiver Denial Order*, the Bureau found that Bloomingdale had not demonstrated good cause to waive the March 1, 2019 deadline since its actions essentially amounted to nothing more than "inadvertent oversight" and "internal ETC confusion" – all of

which do not warrant waiver of the strict filing deadlines imposed for the certifications adopted in the 2011 USF/ICC Transformation Order<sup>12</sup> - and Bloomingdale's confusion was not "reasonable" given that Bloomingdale was not in "the unique situation of having both new reporting requirements and a new method through which to report the geocoded location information data."<sup>13</sup> Conversely, in the Bureau's *December HUBB Waiver Order*, the Bureau granted several petitions to waive the March 1, 2018 deadline for the First-Ever HUBB Filing where filers had successfully uploaded the necessary geocoded location information data to the HUBB and certified the locations to which it had deployed broadband service in the previous year, prior to the deadline, but failed to certify that they had no new locations to report.<sup>14</sup> The Bureau found that good cause existed and waivers were warranted for first round HUBB filers since petitioners had all described "confusion with the *new* HUBB filing requirements" and granting the petitions was in the public interest since petitioner's confusion was "reasonable," given the Bureau's ambiguous guidance, and each petitioner "faced the unique situation of having both *new* reporting requirements and a *new* method through which to report the geocoded location information data."<sup>15</sup> Furthermore, each petitioner had made the requisite certification and the certification did not interfere with the Bureau's ability to monitor broadband deployment.

A large part of the Bureau's argument for finding that Bloomingdale's confusion was not reasonable and denying Bloomingdale's *Joint Petition* appears to hinge on the assumption that the requirement for eligible telecommunications carriers ("ETCs") receiving high-cost support to "submit to [USAC] the geocoded locations to which they have newly deployed broadband"<sup>16</sup> and

---

<sup>12</sup> HUBB Waiver Denial Order at para. 8.

<sup>13</sup> See HUBB Waiver Denial Order at para. 9.

<sup>14</sup> *December HUBB Waiver Order*

<sup>15</sup> *Id.* at para. 14 (emphasis added).

<sup>16</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd 3164, para. 210 (2016) (*Rate-of-Return Reform Order*).

“provide annual certifications with this geocoded location information data”<sup>17</sup> (“HUBB Reporting Requirements”) and the “online system to accept the geocoded location information data and related certifications”<sup>18</sup> (“HUBB Portal”) were no longer considered “new.” However, the Bureau fails to define “new” and answer the following question: Were the HUBB Reporting Requirements and HUBB Portal still “new” during the March 1, 2019 filing?

Bloomington argues that the HUBB Reporting Requirements and HUBB Portal were still “new” as of the March 1, 2019 filing because (i) the March 1, 2019 HUBB filing was only the second year ETCs were required to comply with the HUBB Reporting Requirements and use the HUBB portal and (ii) no formal alert system had been set up yet for notifying filers that they had missed the March 1, 2019 deadline.

In *Western Pacific Broadcast, LLC v. Armstrong Utilities, Inc.*, the Commission acknowledged that “stations on the air less than 3 years are considered new stations” for the purpose of analyzing “whether a station, or other stations located in the same area, have been historically carried on the cable system or systems within such community” – the first statutory factor that must be considered when conducting a market modification analysis.<sup>19</sup> While the facts here differ, the Commission, in the past, has associated time frames with the length of time in which something may be considered “new” and acknowledged that something less than three years old could qualify as “new.”

---

<sup>17</sup> Id. at 3092, para. 7.

<sup>18</sup> Id. at 3166, para. 214.

<sup>19</sup> See Federal Communications Commission, Decision, Complaint for Carriage by Western Pacific Broadcast, LLC v. Armstrong Utilities, Inc. Petition for Modification of Philadelphia, PA Designated Market Area With Regard to Television Station WACP, Atlantic City, NJ, 29 FCC Rcd. 01835, DA 14-231, para. 19. (“*Western Pacific Broadcast, LLC v. Armstrong Utilities, Inc.*”); See also In the Matter of Avenue TV Cable Service, Inc. et al., CSR-5697-A et al., Memorandum Opinion and Order., 16 FCC Rcd 16436, DA 01-2134, para. 22 (2001) (*Avenue TV Cable Service, Inc.*).

The First-Ever HUBB Filing took place on March 1, 2018. The Second-Ever HUBB Filing took place on March 1, 2019. The March 1, 2019 HUBB filing was only the second year ETCs were required to comply with the HUBB Reporting Requirements and use the HUBB Portal and, therefore, both were still “new.”

Additionally, the HUBB Reporting Requirements and HUBB Portal were still “new” during the March 1, 2019 filing because no formal system had been set up yet for notifying filers that they had missed the March 1, 2019 deadline. As part of the E-Rate Program, USAC has a formal and sophisticated notification system whereby USAC issues an FCC Form 486 Urgent Reminder Letter to applicants that appear to have missed the deadline to certify an FCC Form 486<sup>20</sup> based on the service delivery date in the FCC Form 471.<sup>21</sup> USAC calculates the date to issue this letter based on the service start date reported on the FCC Form 471.<sup>22</sup> Applicants typically receive their reminder letter in the EPC Newsfeed and have 15 days from the date of the letter to submit and certify their FCC Form 486 online or on paper with no penalty.<sup>23</sup> If applicants fail to submit and certify their FCC Form 486 online or on paper within the 15-day grace period, their funding commitment may be reduced.<sup>24</sup>

The HUBB Reporting Requirements and the HUBB Portal and E-Rate’s FCC Form 486 requirements were established to fulfill similar goals – to keep track of provider’s compliance with program rules and obligations. Likewise, the HUBB Reporting Requirements provide for a grace period whereby filers will not receive a reduction in support if they submit the annual

---

<sup>20</sup> See <https://www.usac.org/e-rate/applicant-process/starting-services/fcc-form-486-filing/>, stating that Applicants are required to file an FCC Form 486, to notify USAC of compliance with the E-Rate Program’s requirements, no later than 120 days after the service start date shown on the FCC Form 486 or 120 days after the date of USAC’s Funding Commitment Decision Letter.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

reporting information required after the March 1 deadline but before March 5.<sup>25</sup> Additionally, a filer that submits the annual reporting information required after the March 1 deadline but by March 8 will have its support reduced in an amount equal to seven days in support.<sup>26</sup> It is only if a filer submits the annual reporting information after the March 9 that it will have its support reduced on a pro-rata daily basis, plus the minimum seven-day reduction.<sup>27</sup> By establishing a grace period and schedule by which reduction in support increased based on the number of days after the deadline, it appears that the intention was to provide filers that had missed the March 1 deadline with the opportunity to correct the situation to avoid reductions in support. However, a formal system to alert filers that they had missed the March 1 deadline so they could take advantage of the grace periods provided, such as the one developed for E-Rate Program's FCC Form 486 filings, had still not been developed.

As stated, Bloomingdale timely inputted all of its geocoded location data prior to the March 1, 2018 deadline. Bloomingdale only failed to certify that it had no new locations to report by the March 1, 2019 deadline. Such an error could have quickly and easily been corrected within the grace period had Bloomingdale been notified. Instead, Bloomingdale wasn't made aware of its need to certify that it had no new locations to report until March 21, 2019. It is clear from the dates on which other filers were notified, that there was no formal system or process in place to notify filers of the missed deadline and that directly impacted the amounts by which their support was reduced.<sup>28</sup>

---

<sup>25</sup> See 54 C.F.R. § 54.316(c)(1)(iii).

<sup>26</sup> See 54 C.F.R. § 54.316(c)(1)(i).

<sup>27</sup> See 54 C.F.R. § 54.316(c)(1)(ii).

<sup>28</sup> See *Joint Petition*, stating that ComSouth was notified of their failure to certify that they had no new locations to report on March 14<sup>th</sup>, 2019; see also Emergency Request for Expedited Treatment Petition For Waiver Impacted RLEC HUBB Filers, CC Docket No. 01-92, WC Docket Nos. 10-90, 14-58, 07-135 (filed Jun. 11, 2019), <https://ecfsapi.fcc.gov/file/10611356427306/HUBB%20Waiver%20FINAL%206-11-2019.pdf> (*RLEC HUBB Filers Waiver Petition*), stating that Westphalia Telephone Company was notified of their failure to certify that they had no new locations to report on April 13, 2018, Telephone Electronics Corporation was notified on March 15,

The HUBB Reporting Requirements and the E-Rate Program’s FCC Form 486 filings are set up in substantially similar ways to fulfill similar goals. Both are meant to keep track of compliance, both outline specific filing deadlines, both prescribe grace periods for untimely filers and both outline methods for calculating reductions in support. The main difference is that the Bureau has yet to establish a formal system to notify filers that they have missed the filing deadline so that they may go back and take advantage of the grace period provided, whereas USAC has in fact created such a system. Bloomingdale argues that the fact that a formal alert system, such as the one USAC employs for its FCC Form 486 filings, has not yet been set up, supports the fact that the HUBB Reporting Requirements and HUBB Portal are still “new.”

Bloomingdale asks that the Commission use the three-year timeframe, proposed in *Western Pacific Broadcast, LLC v. Armstrong Utilities, Inc.*, and the lack of a formal alert system to notify filers that they had missed the March 1, 2019 deadline to find that the HUBB Reporting Requirements and HUBB Portal were still “new” during the March 1, 2019 HUBB.

- b. The Bureau Made an Erroneous Finding in Concluding that Bloomingdale Should Have Known What The Reduction of Support Would Be Based on the Number of Days it Filed After the Deadline.

The Bureau made an erroneous finding in concluding that, had Bloomingdale referenced the method of calculating support outlined in the Commission’s rules,<sup>29</sup> it would have been able to determine the severity of the penalty for not meeting the March 1, 2019 deadline.<sup>30</sup> Section 54.316(c)(1) of the Commission’s rules outlines the methods of calculating support reductions for ETCs that file their location information data or certify after the March 1 deadline for the

---

2018, Sand Creek Communications was notified on April 10, 2018, Manawa Telephone Company was notified by a third-party on April 11, 2018, Interstate Telecommunications Cooperative, Inc. was notified in mid-April and West River Telecom was notified on March 7, 2018 but was unable to certify until April 18, 2018.

<sup>29</sup> 47 CFR §54.316 (c)(1).

<sup>30</sup> *HUBB Waiver Denial Order* at para. 10.

HUBB Reporting Requirements.<sup>31</sup> This method provides a predictable and logical scheme for ETCs to calculate late filing penalties and budget and plan accordingly. While the Bureau points to the Commission’s method for calculating the support reductions, it failed to take into consideration that, even with the method to calculate the loss in support, Bloomingdale could not have predicted and planned for the severity of the late filing penalty to be further compounded by reductions in revenue as a result of the unprecedented and ongoing COVID-19 pandemic.

As a Legacy carrier, Bloomingdale has been conducting a Fiber-To-The-Home (“FTTH”) overbuild and its increase in support revenue, over the last few years, has been a direct result of Bloomingdale investing in its service area to better serve its customers. Bloomingdale receives and heavily relies on sufficient and predictable universal service funds to deploy FTTH broadband to residents and businesses and maintain vital voice and broadband networks in communities in a very rural and sparsely populated area of Michigan. Every year, Bloomingdale budgets its universal service disbursements to successfully complete its broadband deployment plan as designed.

On March 21, 2019, Bloomingdale was notified that it had erred in failing to certify that it had no newly deployed locations in 2018 in USAC’S HUBB portal by the March 1, 2019 deadline. Upon receiving this notice, Bloomingdale immediately certified that it had no new locations to report within its study area. However, the result of Bloomingdale’s error was that a total of \$62,223 out of \$71,440 of legacy support had been withheld in February of 2020. In March 2020, Bloomingdale began seeing further reductions in revenue as a result of the COVID-19 pandemic. Bloomingdale committed to the Chairman’s Keep America Connected Pledge, thereby waiving late fees, deferring disconnection of services and providing free broadband service to

---

<sup>31</sup> 47 CFR §54.316 (c)(1).

homes with school age children whose schools have closed due to the pandemic, which it continues to do today.

The Bureau argues that Bloomingdale could have referenced the method for calculating reductions in support to determine the impact of the late filing penalty and adjust its budget and broadband deployment plan for 2020 accordingly.<sup>32</sup> However, due to unexpected loss in revenue directly stemming from sacrifices Bloomingdale has made to assist its customers during the COVID-19 pandemic, referencing the method for calculating reductions in support would not have been enough to inform Bloomingdale of the severe impact of the penalty and allow Bloomingdale to plan and adjust accordingly. The financial penalty Bloomingdale incurred will directly and negatively impact the communities they serve. The loss in support will directly affect Bloomingdale's ability to fund broadband deployment, as well as day-to-day operations and maintenance of their current networks and infrastructure. With COVID-19 still rampant, access to sufficient funding is now more critical than ever. Bloomingdale respectfully requests that the Commission find that good causes exists to grant Bloomingdale's *Joint Petition* and restore its high-cost universal service support since Bloomingdale's actions did not simply amount to an "inadvertent oversight" or "internal ETC confusion" and referencing the Commission's method for calculating reductions in support would not have warned Bloomingdale of or allowed it to prepare for the severity of the late filing penalty.

- c. The Bureau's Denial of Bloomingdale's Petition for Waiver is Inconsistent with its Precedent of Waiving its March 1 HUBB Filing Deadlines.

The Bureau has acted inconsistently by denying Bloomingdale's Petition for Waiver while granting similar requests by other carriers. Despite its assertion that "it would require strict adherence to filing deadlines for the certifications adopted in the 2011 USF/ICC Transformation

---

<sup>32</sup> *HUBB Waiver Denial Order* at para. 10.

Order”<sup>33</sup> and “the Commission has denied petitions for waiver of filing deadlines caused by inadvertent oversight, internal ETC confusion or problems resulting from utilizing third party services to produce the required data,”<sup>34</sup> the Bureau granted seven petitions for waiver of the March 1, 2018 HUBB filing deadline for filers who failed to certify they had no locations to report.<sup>35</sup> In its *December HUBB Waiver Order*, the Bureau found that waivers were warranted because the petitioners had all described confusion with the new HUBB Reporting Requirements and HUBB Portal and granting the petitions was in the public interest because the reported confusion was “reasonable,” due to the Bureau’s ambiguous filing instructions, and “ultimately, each made the requisite certification.”<sup>36</sup> Additionally, each petitioner faced new HUBB Reporting Requirements and a new HUBB Portal. Finally, the geocoded location data was successfully uploaded to the HUBB prior to the deadline and, therefore, the certification did not impede the Bureau’s ability to monitor broadband deployment.

Similarly, Bloomington experienced confusion with what it argues were still new HUBB Reporting Requirements and a new HUBB Portal. Bloomington’s confusion was “reasonable” because it was still adhering to the Bureau’s ambiguous filing instructions that were still in place and had not been corrected or clarified since the Bureau’s *December HUBB Waiver Order* was not released until December 2, 2019 – nine months after the Second-Ever HUBB Filing. Therefore, conflicting guidance and instructions were still in place, despite additional guidance and notifications provided. Bloomington acted in good faith to complete the “no locations” certifications as soon as it was notified that it had not yet done so. Additionally, like those filers granted waivers in the Bureau’s *December HUBB Waiver Order*, Bloomington timely inputted

---

<sup>33</sup> *HUBB Denial Waiver Order* at para. 8.

<sup>34</sup> *Id.*

<sup>35</sup> *December HUBB Waiver Order* at para. 1.

<sup>36</sup> *Id.* at para. 19.

all of its geocoded location data and made the requisite certifications prior to the March 1, 2018 deadline. Bloomingdale simply had no new locations to report and failed to certify that it had no new locations to report by the March 1, 2019 deadline. Therefore, Bloomingdale’s failure to certify no locations did not impede the Bureau’s ability to monitor broadband deployment.

The Bureau has made it clear that it would be “unlikely to grant future petitions with similar facts.”<sup>37</sup> However, a precedent was set in its *December HUBB Waiver Order* and the Bureau should adhere to it. To ignore this precedent, Bloomingdale argues, would be inequitable and punitive in this instance where \$62,223 in Legacy support is at stake, during a time in which Bloomingdale continues to experience losses in revenue due to the steps it has taken to assist customers during the COVID-19 pandemic, simply because it failed to timely make the non-requisite certification after timely uploading all of its requisite location information data and certifications.

Furthermore, the Commission typically considers many factors when determining the amount of forfeiture penalties, including “the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>38</sup> There have been instances where the FCC has reduced or cancelled penalties for first-time offenders.<sup>39</sup> This is Bloomingdale’s first offense and Bloomingdale has a history of complying with the

---

<sup>37</sup> *Id.* at para. 20; See also *HUBB Denial Waiver Order* at para. 5.

<sup>38</sup> 47 C.F.R. §1.80(b)(9).

<sup>39</sup> See Federal Communications Commission, Decision, Notice of Forfeiture issued to Anacortes Yacht Charters on June 25, 1992, 7 FCC Rcd. 8588, DA 92-1674 (1992), reducing the penalty from \$8,000 to \$800 because this was a first offense; see also Federal Communications Commission, Decision, SEG Cellular Limited Partnership, Notice of Apparent Liability for Forfeiture Penalty for Station KNKN586 in the Domestic Public Cellular Radio Telecommunications Service serving Market 102A, Des Moines, Iowa, 7 FCC Rcd. 5920, FCC 92-408 (Sept. 9, 1992), reducing the penalty from \$80,000 to \$64,000 after considering the carrier’s “history of overall compliance”; and Federal Communications Commission, Decision, Robin L. Allen, Port Angeles Washington, 8 FCC Rcd. 8734, DA 93-1475 (Dec. 15, 1993), cancelling the monetary forfeiture penalty based on reconsidering the fact that this was a first offense with no prior record of violation.

Commission's rules and reporting requirements. All of Bloomingdale's required location information was uploaded into the HUBB Portal and all Bloomingdale did was fail to click a button certifying that it had no new locations to report. This was only the Second-Ever Hubb Filing and there was still conflicting guidance because the Bureau's *December HUBB Waiver Order*, clarifying and correcting filing instructions, was not released until after the March 1, 2019 deadline. Finally, Bloomingdale's actions did not interfere with the Bureau's ability to track broadband deployment and Bloomingdale has since implemented a number of internal controls to prevent this error from ever happening again. Bloomingdale reiterates that to not follow the precedent set and impose such a reduction in support for a first-time offense of what were arguably still new reporting requirements and a new reporting system would be punitive. Therefore, Bloomingdale respectfully requests that the Commission follow the precedent set by the Bureau and grant its *Joint Petition* and restore funding.

### **III. CONCLUSION**

Bloomingdale serves a very rural part of Michigan. It is important to note, again, that ultimately this penalty will prevent residents in Bloomingdale's service territory from being able to access broadband service, as well as government services, health care services, educational opportunities and business opportunities which, in the midst of COVID-19, are necessary. The universal service support that was withheld from Bloomingdale is not being taken from Bloomingdale's bank account but from its customers who are relying on Bloomingdale to deliver high-speed broadband. The customers of those similarly-situated first-round HUBB filers, that were granted waivers, will not suffer since funding will be restored. The customers of future HUBB filers will not suffer since filing instructions are now clear. Bloomingdale's customers should not have to suffer the consequences of a lack of high-speed broadband when waivers have

been granted previously and the facts herein are similar given that the HUBB Reporting Requirements and HUBB portal were new since this was only the Second-Ever HUBB Filing.

In light of the foregoing, the Commission should reverse the Bureau's decision and grant Bloomingdale's request for waiver and restore the \$62,223 in Legacy support withheld *only* for the March 1, 2019 deadline to upload and certify geocoded location information data with USAC through the HUBB portal and *only* to the extent Bloomingdale had to certify that it had no new locations to report.

September 1, 2020

Respectfully Submitted,

/s/ Steve Shults

Steve Shults

General Manager and CEO

Bloomingdale Telephone Company

PO Box 187

Bloomingdale, Michigan 49026