

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

In the Matter of	)	
	)	
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 a Unified Inter-carrier 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
	)	

To: The Commission

**REPLY COMMENTS OF CENTRAL TEXAS TELEPHONE COOPERATIVE, INC.**

Central Texas Telephone Cooperative, Inc. (“Central Texas”),<sup>1</sup> by its attorneys, hereby replies to comments filed concerning the Federal Communications Commission’s (“FCC” or “Commission”) proposed high-cost loop regression analysis model used to determine carrier-specific limits on High Cost Loop Support (“HCLS”) payments to rate-of-return carriers.<sup>2</sup> Based on the numerous comments filed in this proceeding, the record does not support the FCC’s proposed imposition of its regression model in its current form. In fact, Central Texas’s review

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<sup>1</sup> Central Texas is a rate-of-return, cost-based incumbent local exchange carrier (“ILEC”) that provides telecommunications and broadband services to customers in remote, central Texas.

<sup>2</sup> *Notice Concerning Universal Service Inter-carrier-Compensation Transformation Proceeding*, Public Notice, DA 11-1966 (December 2, 2011) (“*Regression Model Public Notice*”).

of the record indicates absolutely zero support for the FCC's flawed and arbitrary regression model.

### **I. The Record Does Not Support Use of the Model**

The comments filed in this proceeding have exposed the errors and random results in the FCC's econometric process for modeling limits on reimbursable capital expenses ("capex") and operating expenses ("opex") as discussed in Appendix H of the November 18, 2011 *USF/ICC Order*.<sup>3</sup> Like Central Texas, many companies and their cost consultants and representatives used the FCC's regression analysis input and output data and purchased the STATA econometric model the FCC used to perform its regression analysis in order to understand how the complex model works, or, as is currently the case, does not work. Based on the comments from the entities who have studied the FCC's regression model, the record in this proceeding leads to the conclusion that the model's results, whether favorable or beneficial to a company, are inherently arbitrary and cannot be trusted.

For obvious reasons of financial self-interest, many entities that will be financially harmed by the FCC's regression model filed comments in opposition to the model's use. While such outcry could certainly be anticipated, what was notable and unexpected in the comment round was the complete lack of support by any party for the model's use. While even Central Texas is not opposed to reasonable and justified caps, the prominent lack of support and nary a

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<sup>3</sup> *In re 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 a 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, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (November 18, 2011) ("*USF/ICC Order*").

defense of the FCC's regression model results in a determination that the model, unless its flaws are fixed, is indefensible and its use, as is, would be arbitrary and capricious.

Many companies that analyzed the model have spent years operating under one set of rules, only to be told that their once-legal costs are now considered questionable and imprudent due to the inaccurate results of the Commission's defective quantile regression model. As the joint comments of the National Exchange Carrier Association ("NECA"), National Telecommunications Cooperative Association ("NTCA"), Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"), and the Western Telecommunications Alliance ("WTA") point out, none other than Dr. Roger Koenker, the "father" of quantile regression analysis, has concluded that the FCC's mishandling of his theories has led to a model that is defective and that leads to "gross distortions."<sup>4</sup> To sum up Dr. Koenker's conclusions, "[u]nless extraordinary efforts are undertaken to correct these inaccuracies, the analyses conducted by the Commission will incorporate substantial errors from the start and result in caps with no valid statistical tether to their intended purpose."<sup>5</sup> The Commission must slow down and fix the substantial and fatal errors pointed out by Dr. Koenker.

Concern about the model's results being driven by past investment decisions was a common theme in the comments. As Blue Valley Telecommunications noted, "[w]ith the retroactive implementation of an investment cap, the FCC is, in effect, proposing an 'after the fact' prudence review."<sup>6</sup> The National Tribal Association mirrors this point when it notes that

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<sup>4</sup> NECA, NTCA, OPASTCO, and WTA Comments at 64.

<sup>5</sup> NECA, NTCA, OPASTCO, and WTA Comments at 65 and 66.

<sup>6</sup> Blue Valley Telecommunications Comments at 3.

the model's retroactive effects "represent a [breach] of reliance by tribes on federal obligations."<sup>7</sup> The Blooston Rural Broadband Carriers note that it is virtually "black letter law" that any new regulations be applied prospectively.<sup>8</sup> Central Texas is quite certain that, in light of these comments, the FCC is acutely aware of the legal pitfalls of implementing regulations that apply retroactively.

Central Texas pointed out in its comments that the FCC's use of the 90<sup>th</sup> percentile as an indicator of imprudent expenses is arbitrary on its face and lacks justification in the record.<sup>9</sup> Further, the FCC lacks adequate data to assume that any expense beyond the 90<sup>th</sup> percentile is imprudent.<sup>10</sup> As NECA, *et. al.* confirm, the 90th percentile is an arbitrary figure that appears as if "plucked from thin air" merely because of what it *may* indicate.<sup>11</sup> The comments reveal additional problems with the FCC's choice of the 90<sup>th</sup> percentile. For example, the Nebraska Rural Independent Companies conclude that a 90<sup>th</sup> percentile cap is "too stringent" in light of the poor predictive power of the FCC's regression analysis.<sup>12</sup> These Nebraska companies go on to discuss how a repeated application of caps based at the 90<sup>th</sup> percentile will lead to a "spiral" of cost constraint.<sup>13</sup> If the FCC keeps chopping 10 percent off of costs on a yearly basis, companies will, in theory, eventually end up with next to nothing.

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<sup>7</sup> National Tribal Telecommunications Association Comments at 28.

<sup>8</sup> Blooston Rural Broadband Carriers at 4.

<sup>9</sup> Central Texas Comments at 4.

<sup>10</sup> *See Portland Cement Ass'n v. Ruckelhaus*, 486 F.2d 375, 393 (D.C. Cir. 1973) ("It is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data...").

<sup>11</sup> NECA, NTCA, OPASTCO, and WTA Comments at 66.

<sup>12</sup> Nebraska Rural Independent Companies Comments at 51.

<sup>13</sup> Nebraska Rural Independent Companies Comments at 75.

Many commenters were troubled by the inaccuracies inherent in the way the model predicts costs based on loop counts, ignoring other loop-based factors that affect cost. As Central Texas pointed out in its comments, basing a carrier's support almost exclusively on the number of loops it serves, while essentially ignoring loop length, terrain factors and other legitimate costs, leads to capricious results.<sup>14</sup> ATC Communications noted that the FCC's regression model does not take into account the primary drivers of loop costs such as the length of loops.<sup>15</sup> Calaveras Telephone Company, ATC Communications, and Chillicothe Telephone Company echo this sentiment.<sup>16</sup> Without accurate loop length data or a reasonable proxy for loop length, the FCC's model is doomed to inaccuracy.

Numerous commenters also discussed the model's glaring lack of terrain-based factors that affect cost. To date, the FCC has only developed a "*rough* indicator of terrain-driven costs" using land and percent water.<sup>17</sup> The law requires specificity, not a rough estimate that may or may not be accurate.<sup>18</sup> Guadalupe Valley Telephone Cooperative, Inc. said it is unclear whether dividing housing units and land areas into urban, urban clusters, or non-urban was an accurate indicator of costs.<sup>19</sup> With the tremendous population range in each of these categories, notes Guadalupe Valley Telephone Cooperative, Inc., it cannot be determined whether these units are reliable Independent Variables.<sup>20</sup> In order to provide examples of other terrain-based factors that influence cost, the Washington Independent Telecommunications Association discussed a typical

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<sup>14</sup> Central Texas Comments at 5.

<sup>15</sup> ATC Communications Comments at 3.

<sup>16</sup> Calaveras Telephone Company Comments at 3, Cambridge Telephone Company Comments at 3, and Chillicothe Telephone Company Comments at 4.

<sup>17</sup> Appendix H at ¶ 27 (emphasis added).

<sup>18</sup> 47 U.S.C. § 254(b)(5) (requiring "specific and predictable support mechanisms").

<sup>19</sup> Guadalupe Valley Telephone Cooperative, Inc. Comments at 2.

<sup>20</sup> *Id.*

plant installation near the Columbia River that would include 3,000 feet of plowing, 1000 feet of boring through dirt, 1000 feet of rock trenching, plus 200 feet of rock boring.<sup>21</sup> In simple terms, this costs money – money that the FCC’s model, lacking consideration of such costs, erroneously labels as imprudent. Among other commenters noting the lack of accurate terrain data are Accipiter Communications, Midvale Telephone Exchange, Inc., and Copper Valley Telephone Cooperative.<sup>22</sup> Copper Valley Telephone Cooperative sums up this concern over the lack of determinative terrain-based cost drivers when it says that “[c]hanging to another set of rules and applying those rules to legacy investment is grossly unfair, especially in light of the operating challenges faced in the rugged Alaska territory that it serves.”<sup>23</sup> Be it Alaska, Texas, or another state, the comments provide numerous examples of legitimate drivers of cost that the current FCC regression model arbitrarily and capriciously ignores.

There are a number of other blatant errors that were raised in the comment round that are worth noting. As Sacred Wind Communications points out, the FCC is using a TeleAtlas map that shows the Sacred Wind study area to be 200 miles when, in reality, Sacred Wind’s study area is 3,600 miles.<sup>24</sup> The “Section E” Rural Carriers pick apart additional map errors such as study area boundaries not corresponding with census block boundaries.<sup>25</sup> And finally, the Nebraska Rural Independent Companies note that, in addition to inaccurate maps, the FCC’s regression model lacks any adequate density data – a “critical” variable.<sup>26</sup>

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<sup>21</sup> Washington Independent Telecommunications Association Comments at 5.

<sup>22</sup> Accipiter Communications Comments at 24 and 25, Midvale Telephone Exchange, Inc. Comments at 2, and Copper Valley Telephone Cooperative Comments at 3.

<sup>23</sup> Copper Valley Telephone Cooperative Comments at 3.

<sup>24</sup> Sacred Wind Communications Comments at 2.

<sup>25</sup> “Section E” Rural Carriers Comments at 6.

<sup>26</sup> Nebraska Rural Independent Companies Comments at 14.

## II. Conclusion

The record unequivocally demonstrates that the FCC's regression model is legally flawed in its current form. With relevant regression model data first being released on December 2, 2012, and with an administratively inadequate explanation in Appendix H of the *USF/ICC Order*, companies have had to scramble to understand and interpret the complex quantile regression-based model. Now that these entities have exposed the flaws in the model in its current form, it would be a good time for the FCC to pause, reevaluate, and fix its flawed model, rather than rush to adopt a model that is unsupported by the record and unsustainable in court. Accordingly, Central Texas respectfully requests that the FCC take the time to amend and adequately explain its model in light of the overwhelming record demonstrating that the model is inherently flawed. Failure to do so will result in the use of the model being stayed in court and either rejected or remanded.

Respectfully submitted,

**CENTRAL TEXAS TELEPHONE  
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