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
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
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
	)	
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

Comments of Heart of Iowa Communications Cooperative

I. Introduction

On January 18, 2012 the Federal Communications Commission (FCC or Commission) received comments from more than 80 parties in response to a Further Notice of Proposed Rulemaking (FNPRM) addressing certain issues in the dockets referenced above.[1] Many parties

[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 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, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov.18, 2011) (*Order/FNPRM*).

expressed concerns regarding limiting reimbursable capital and operating costs for rate of return carriers (RoR LECs) utilizing quantile regression analysis.[2]

The FCC should not adopt a quantile regression analysis as a method to limit capital and operating costs that will be reimbursable through either HCLS or ICLS. This method is irrevocably flawed and will cause a great deal of uncertainty in the industry bringing investment in areas served by RoR LECs to a standstill. This will undermine job creation and retention in rural areas as well as have dramatic impacts on the services provided by all RoR LECs and ultimately harming their customers. If the regression analysis is adopted as proposed in the FNPRM, Heart of Iowa Communications Cooperative (Heart of Iowa) will see significant reductions in its net income with the potential of having negative net income within two years. This will have dramatic impacts on the services it provides to its customers.

Heart of Iowa is a cooperative RoR LEC in central Iowa and offers traditional voice and robust broadband services to its customers. Because of its sparsely-populated high-cost service area, it is heavily dependent upon federal high-cost support and access revenues to maintain reasonable rates and quality service for its customers.[3] Despite this challenge, Heart of Iowa has diligently sought to achieve the FCC's goals of ubiquitous broadband service through the "no barriers" policy as well as the stated goals as a result of the National Broadband Plan and

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[2] Comments of Blue Valley Telecommunications (*Blue Valley*); Comments of the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance (*Rural Associations*); Comments of the Blooston Rural Broadband Carriers; Comments of Central Texas Telephone Cooperative (*Central Texas*); Comments of the Nebraska Rural Independent Companies (*NRIC*); Comments of Rural Telephone Service Company; Comments of Sacred Wind Communications; Comments of TCA (*TCA*); Comments of the Washington Independent Telecommunications Association., Oregon Telecommunications Association, Idaho Telecommunications Alliance, Montana Telecommunications Association and Colorado Telecommunications Association (*WITA et al.*).

[3] Heart of Iowa serves approximately 468 square miles with an average density of approximately 10 customers per square mile.

subsequent proceedings, and has therefore deployed fiber to the home in the majority of its service area ensuring that its rural customers enjoy the same level of service as customers in urban areas.

II. The FCC should abandon its proposed limits on capital and operating expenses.

The FCC should not adopt its proposed quantile regression caps for the allowable recovery of capital expenditures and operating expenses for several reasons. First, the retroactive application of the proposed caps is grossly unfair and will, at a minimum, jeopardize Heart of Iowa's ability to continue to provide broadband service that is reasonably comparable to service offered in urban areas to the entirety of its service area. Second, the use of quantile regression and the dynamic nature of the caps will increase the uncertainty of high cost support to such an extent that no RoR LEC will be able to effectively manage its costs – in spite of any stringent cost control measures. Third, the omission of critical variables discriminates against many of the higher-cost RoR LECs. Finally, the FCC's proposal to deny RoR LECs impacted by the caps any recycled HCLS serves no "cost control" objective and appears to be intended to merely penalize the "offending" party even further.

The retroactive application of the investment caps to RoR LECs that have already deployed broadband-capable networks is unfair and contrary to the 1996 Telecommunications Act's mandate that support be predictable.[4] The FCC encouraged these RoR LECs, including Heart of Iowa, to deploy multi-use networks capable of providing broadband service.

[4] 47 U.S.C. §254(b)(5).

Subsequently, Heart of Iowa has borrowed considerable amounts from the Rural Telephone Finance Cooperative and another branch of the federal government – the Rural Utilities Service (RUS) – to finance facilities deployment. As TCA points out, the RUS performs a rigorous review and analysis before any loan is made to ensure that the loan is prudent, appropriate and in accordance with federal requirements.[5] With the retroactive implementation of an investment cap, the FCC is, in effect, proposing an "after the fact" prudency review without any of the information approved by the RUS. By ignoring the RUS facility approvals, the FCC has put the RUS loans at risk with the proposed investment caps. Accordingly, the retroactive application of any caps on investment should be rejected on its face. Even worse, the retroactive application of investment caps penalizes Heart of Iowa which has invested in broadband-capable networks when there is nothing it can do to counter the impacts of capping capital expenses. As Blue Valley points out, the investments are already made and Heart of Iowa cannot undo loan commitments or tear out its existing network.[6] The FCC's proposed reductions would cause Heart of Iowa to lose 48% of its HCLS which would lead it to potentially have negative net income and impair its ability to service its debt within two years of implementation.[7] This dramatic revenue reduction will have devastating impacts on Heart of Iowa's customers including service quality degradation and increased rates.[8] Therefore, retroactive application of these caps fails any rational test of

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[5] *TCA* at. p. 6.

[6] Comments of *Blue Valley* at p.4.

[7] These projections will be accelerated if the FCC adopts a similar limitation under ICLS.

[8] Heart of Iowa's local rate is already above the national average listed in the Order (*Order/FNPRM* at para. 243). Increasing rates may not be a solution if Heart of Iowa is required to certify that its local and broadband rates are reasonably comparable to urban rates.

appropriate public policy for an agency that professes to want to incent the universal deployment of broadband and is contrary to the FCC's own stated goals adopted in the Order.[9]

The FCC's proposed use of quantile regression, regardless of the percentage used to cap costs, is inappropriate because it fails to ensure that support is sufficient.[10] Quantile regression, regardless of the percentage used to set caps, cannot delineate the reasonableness of expenses necessary to properly provide service, instead, it merely produces an arbitrary number that RoR LECs must be below. Even if all RoR LECs are operating 100% efficiently and prudently, there would still be a 90th, or any other, percentile of costs that will be excluded simply due to the nature of this analysis. Therefore, quantile regression does not acheive the FCC's stated intent to exclude excessive costs. Further, as the Rural Associations point out, "[N]o such artificial limit is capable of rationally excluding excessive costs in a way that would comply with the Act's sufficiency mandate."[11]

Even worse, cutting costs may not save Heart of Iowa from these reductions due to the dynamic nature of proposed limitations. The FCC proposes dynamic investment and expense caps that will create a "race to the bottom" that are recalculated every year, creating "floating" – and unpredictable – caps. This creates a scenario in which Heart of Iowa's management has no ability to effectively ensure costs are below any caps that are set or predict levels of support. This unpredictability and insufficiency is contrary to section 254(b)(5) of the 1996 Telecommunications Act. Therefore, any investment and expense caps must be static and provide companies a reasonable opportunity to effectively manage operations to achieve compliance with

[9] *Order/FNPRM* at para. 17.

[10] *Rural Associations* at pp.66-67; *TCA* at p. 7

[11] *Rural Associations* at p. 67.

the caps. This is consistent with the manner in which the FCC has addressed this issue in the past, as evidenced by the cap on corporate operations expense.[12] This is also consistent with the caps on investment and expense contained in the RLEC plan which the Rural Associations offer as a viable alternative to the FCC's ill-conceived quantile regression analysis.[13]

The FCC justifies the considerable uncertainty in the distribution of HCLS that will result by its retroactive and dynamic application of quantile regression analysis caps on investment and expense by contending that the current HCLS mechanism is unpredictable. However, the current HCLS mechanism has enough predictability to allow Heart of Iowa to budget for the future and secure financing from traditional industry lenders. However, as Blue Valley states, "[E]ven if the FCC's assertion were true, the FCC's goal, in light of the 1996 Telecommunications Act, should be to eliminate the uncertainties, not increase them."[14]

As several commenters state, the FCC proposed investment and expense caps do not include a number of critical variables that impact network deployment costs, including loop lengths, soil texture and composition, topography, and other geographical conditions.[15] Until this defect in the investment cap is corrected, the FCC should not adopt the proposed caps. As Central Texas states, "Basing a carrier's support almost exclusively on the number of loops it serves, while essentially ignoring loop length and other legitimate costs, leads to arbitrary results."[16] Central Texas goes on to show that the FCC's model does not accurately reflect costs of RoR

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[12] 47 C.F.R §36.601(c).

[13] *Rural Associations* at. p. 73

[14] *Blue Valley* at p. 6.

[15] *Rural Associations* at p. 70, TCA at p. 7, *Central Texas* at p. 4, WITA at pp. 3-8

[16] *Central Texas* at p. 5

LECs that pass loops through large expanses of land because it assigns no weight to blocks without housing units. Additionally, because the FCC chose to use only a "rough indicator of terrain-driven costs" Heart of Iowa could face unfair punitive reductions in HCLS by being grouped with "peers" that have significantly different networks and different cost characteristics.[17]

Heart of Iowa also agrees with TCA that the FCC's proposal to deny RoR LECs impacted by the investment or the expense caps any "recycled" HCLS appears to be merely punitive and serves no real "cost control" objective.[18] TCA points out that this proposal is inconsistent with existing FCC policies in which HCLS reductions for RoR LECs that exceed the corporate operations expense cap are recycled back through the HCLS mechanism – and all recipients of HCLS are allowed to receive this "recycled" support. By denying Heart of Iowa "recycled" HCLS funds, the FCC is in essence doubling the penalty for exceeding the quantile regression analysis caps and simply compounding the punishment to Heart of Iowa for serving high cost areas. Furthermore, Heart of Iowa agrees with TCA that the FCC's proposal to divert HCLS funds from RoR LECs is troubling in light of numerous reductions in support envisioned by this Order and should be rejected.

III. **Conclusion**

For the above stated reasons, Heart of Iowa holds that the FCC should not retroactively adopt limits on capital and operating expenses and it should also abandon quantile regression analysis as a method to limit reimbursable expenses through either HCLS or ICLS. The FCC's

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[17] *TCA* at p. 7

[18] *TCA* at p. 8.

proposed caps on investment and expense will effectively limit broadband availability in many rural, high cost areas and unnecessarily penalize those who live there.

Respectfully Submitted

[electronically filed]
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