

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 the S&T Telephone 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.<sup>1</sup> Many parties

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<sup>1</sup> 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.<sup>2</sup>

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 rate-of-return (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, S&T Telephone Cooperative Association (S&T) will see significant reductions in high-cost support, having dramatic impacts on the services it provides to its customers.

S&T is a cooperative rate of return local exchange carrier (RoR LEC) in north western Kansas 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 and state high-cost support and access revenues to maintain reasonable rates and quality service for its customers. Despite this challenge, S&T 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 subsequent proceedings, and has therefore deployed its network in a

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<sup>2</sup> 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.*).

manner to ensure that its rural customers enjoy the same level of voice and broadband 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 S&T'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.<sup>3</sup> The FCC encouraged these RoR LECs, including S&T, to deploy multi-use networks capable of providing broadband service. Subsequently, S&T

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<sup>3</sup> 47 U.S.C. §254(b)(5).

has borrowed considerable amounts from the Rural Telephone Finance Cooperative, to finance facilities deployment and was recently approved to receive additional funding to replace aging plant. As TCA points out, traditional industry lenders perform a rigorous review and analysis before any loan is made to ensure that the loan is prudent and appropriate.<sup>4</sup> 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 lenders. By ignoring facility approvals, the FCC has put 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 S&T 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 S&T cannot undo loan commitments or tear out its existing network.<sup>5</sup> Therefore, retroactive application of these caps fails any rational test of 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.<sup>6</sup>

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.<sup>7</sup> 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

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<sup>4</sup> TCA at. p. 6.

<sup>5</sup> Comments of *Blue Valley* at p.4.

<sup>6</sup> *Order/FNPRM* at para. 17.

<sup>7</sup> *Rural Associations* at pp.66-67; TCA at p. 7

would still be a 90<sup>th</sup>, or any other, percentile of costs that will be excluded simply due to the nature of this analysis. Therefore, quantile regression does not achieve 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."<sup>8</sup>

Even worse, cutting costs may not save S&T 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 S&T's management has no ability to effectively control costs or predict levels of support. The FCC's proposed reductions alone would lead S&T to lose 17% of its high cost support and S&T has no confidence that they will not face greater impacts in future years, even assuming they reduce or make no changes to their capital or operations expenses.<sup>9</sup> As NRIC states, "Annual recalculation of the caps creates risks that today's reasonable investment will be considered excessive in the future solely because other carriers change their spending behavior."<sup>10</sup> In other words, the FCC is proposing a method of limiting expenses that would deem a particular level of capital and operations expense acceptable one year and excessive the next. Further, the Order requires RoR LECs to provide 4/1Mbps broadband service upon reasonable request, but S&T will have no way of knowing if the investment necessary to do so will cause them to exceed the investment caps. In other words, S&T must build-out and "hope" that it can recover its costs. As a result, even though S&T was recently

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<sup>8</sup> *Rural Associations* at p. 67.

<sup>9</sup> These projections may be accelerated if the FCC adopts a similar limitation under ICLS.

<sup>10</sup> *NRIC* at p. 12

approved to receive funding from RUS to replace portions of its network that are at the end of their useful life and require excessive maintenance, the potential unpredictability of future support under this proposal has already caused S&T to reconsider its investment plans. This unpredictability and insufficiency is contrary to section 254(b)(5) of the 1996 Telecommunications Act.<sup>11</sup> Therefore, any investment and expense caps must be static and provide companies a reasonable opportunity to effectively manage operations to achieve compliance with 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.<sup>12</sup> 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.<sup>13</sup>

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 S&T 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.”<sup>14</sup>

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

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<sup>11</sup> 47 U.S.C. §254(b)(5) mandates, “There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”

<sup>12</sup> 47 C.F.R §36.601(c).

<sup>13</sup> *Rural Associations* at p. 73

<sup>14</sup> *Blue Valley* at p. 6.

lengths, soil texture and composition, topography, and other geographical conditions.<sup>15</sup> 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.”<sup>16</sup> Central Texas goes on to show that the FCC’s model does not accurately reflect costs of RoR 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” S&T could face unfair punitive reductions in HCLS by being grouped with “peers” that have significantly different networks and different cost characteristics.<sup>17</sup>

S&T 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.<sup>18</sup> 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 S&T “recycled” HCLS funds, the FCC is in essence doubling the penalty for exceeding the quantile regression analysis caps and simply compounding the punishment to S&T for serving high cost areas. Furthermore, S&T 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.

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<sup>15</sup> *Rural Associations* at p. 70, *TCA* at p. 7, *Central Texas* at p. 4, *WITA* at pp. 3-8

<sup>16</sup> *Central Texas* at p. 5

<sup>17</sup> *TCA* at p. 7

<sup>18</sup> *TCA* at p. 8.

### III. Conclusion

For the above stated reasons, S&T 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 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 submitted]  
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