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 All West Communications, Inc., BPS Telephone Company, Chequamegon Communications Cooperative, Inc., Citizens Telephone Cooperative, Cochran Cooperative Telephone Company, Craw-Kan Telephone Cooperative, Inc., Cunningham Telephone Company, Fort Mojave Telecommunications, Inc., Glenwood Telephone Membership Corporation, Golden Belt Telephone Association, Inc., Granby Telephone Company, Hemingford Cooperative Telephone Company, Keystone-Arthur Telephone Company, Mutual Telephone Company, Nucla-Naturita Telephone Company, Peetz Cooperative Telephone Company, Peoples Telecommunications, LLC, Philips County Telephone Company, Pine Drive Telephone Company, Plains Cooperative Telephone Association, Inc., Rainbow Telecommunications Association, Inc., Roggen Telephone Cooperative Company, The Southern Kansas Telephone Company, Southwest Oklahoma Telephone Company, Inc., West Wisconsin Telcom Cooperative, Inc., Wiggins Telephone Association, Willard Telephone Company

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 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.

The above listed companies are RoR LECs and offer traditional voice and broadband services to their customers.[3] They also all serve sparsely-populated high-cost areas, and are

[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*).

[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] Comments of All West Communications, Inc., BPS Telephone Company, Chequamegon Communications Cooperative, Inc., Citizens Telephone Cooperative, Cochran Cooperative Telephone Company, Craw-Kan Telephone Cooperative, Inc., Cunningham Telephone Company, Fort Mojave Telecommunications, Inc., Glenwood Telephone Membership Corporation, Golden Belt Telephone Association, Inc., Granby Telephone Company, Hemingford Cooperative Telephone Company, Keystone-Arthur Telephone Company, Mutual Telephone Company, Nucla-

heavily dependent upon federal and state high-cost support and access revenues to maintain reasonable rates and quality service for their customers.

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 the very existence of many RoR LECs that have relied on the FCC's current USF regime to deploy broadband in high-cost areas. 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 (primarily soil texture) discriminates against many of the higher-cost RoR LECs serving mountainous states. 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

Naturita Telephone Company, Peetz Cooperative Telephone Company, Peoples Telecommunications, LLC, Philips County Telephone Company, Pine Drive Telephone Company, Plains Cooperative Telephone Association, Inc., Rainbow Telecommunications Association, Inc., Roggen Telephone Cooperative Company, The Southern Kansas Telephone Company, Southwest Oklahoma Telephone Company, Inc., West Wisconsin Telcom Cooperative, Inc., Wiggins Telephone Association, Willard Telephone Company (*RoR LECs* or the *Companies*).

Act's mandate that support be predictable.[4] The FCC encouraged these RoR LECs to deploy multi-use networks capable of providing broadband service. Subsequently, many of the Companies have borrowed considerable amounts from another branch of the federal government – the Rural Utilities Service (RUS) – to finance facilities deployment. Some of these loans were under the Broadband Initiatives Program (BIP) authorized by the American Recovery and Reinvestment Act (ARRA) to bolster the economy and provide badly needed jobs in rural America.[5] 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.[6] 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 RoR LECs which have invested in broadband-capable networks when there is nothing they can do to counter the impacts of capping capital expenses. As Blue Valley points out, the investments are already made and companies cannot undo loan commitments or tear out existing networks.[7] Therefore, retroactive application of these caps fails any rational test of appropriate

[4] 47 U.S.C. §254(b)(5).

[5] American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009).

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

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

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.[8]

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.[9] 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."[10]

Even worse, cutting costs may not save a RoR LEC 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. Additionally, companies that are not impacted in 2012 have no confidence that they will not be impacted in future years, even assuming they make no changes to their capital or operations expenses. 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

---

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

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

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

carriers change their spending behavior."[11] 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.[12] Therefore, RoR LECs that may not be impacted in 2012 will likely be reluctant to build out in the future due to fear of exceeding the caps. This in turn creates a catch-22 for those LECs that are not currently offering broadband at speeds of 4/1Mbps as the Order requires them to provide this level of service upon reasonable request. These RoR LECs must build-out and "hope" that they can recover their costs. 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 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.[13] 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.[14]

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 the Companies to budget for the future and secure financing from traditional industry lenders. However, as Blue Valley states, "[E]ven if the

---

[11] *NRIC* at p. 12

[12] 47USC254(b)(5) mandates, "There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."

[13] 47 C.F.R §36.601(c).

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

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."[15]

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. [16] 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."[17] 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" it unfairly penalizes RoR LECs that have built a robust broadband-capable network in rocky terrain with the loss of HCLS by comparing them with other RoR LECs that have an entirely different topographical service area.[18] These RoR LECs would face unfair punitive reductions in HCLS by being grouped with "peers" that have significantly different networks and different cost characteristics which would significantly reduce investment and expenses caps. Therefore, by omitting these variables the FCC punitively discriminates against

---

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

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

[17] *Central Texas* at p. 5

[18] *Order* at. Appendix H para. 27.

many of the higher-cost RoR LECs, especially those serving mountainous states, by limiting their HCLS.[19]

TCA also indicates 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.[20] It 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. Furthermore, the Companies agree 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, the Companies hold 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 on
Behalf of the RoR LECs

[19] *TCA* at p. 7

[20] *TCA* at p. 8.

/s/ Kevin Kelly
Kevin Kelly
Director of Regulatory Services/Partner
TCA
526 Chapel Hills Drive
Colorado Springs, CO 80920
(719) 266-4334

February 17, 2012