

**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 an 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 MINNESOTA INDEPENDENT COALITION**

The Minnesota Independent Coalition (“MIC”)<sup>1</sup> submits the following comments in response to the request for comments issued by the FCC’s Wireline Competition Bureau on January 27, 2012, concerning a petition (the “Petition”) filed by the Independent Telephone and

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<sup>1</sup> The MIC is an unincorporated association of over seventy-five small, Incumbent Local Exchange Carriers (“ILECs”) providing local exchange service to primarily rural areas in Minnesota. MIC members are responsible for telecommunications service to customers throughout 50% of Minnesota’s land mass - including service to over 250 small communities and their surrounding rural areas. MIC members average approximately 4,800 access lines, although half of the MIC members have fewer than 1,800 access lines. The average number of access lines per exchange is approximately 1,100 with half serving fewer than 600 access lines.

Telecommunications Alliance and others<sup>2</sup> requesting clarification of certain aspects of the recently adopted rules in the *USF/ICC Transformation Order and FNPR*.<sup>3</sup>

The MIC supports the Petition in seeking clarification of sections 47 C.F.R.54.313(h) and 47 C.F.R. 54.318(a) pertaining to the date for determining compliance with rate floor requirements. As the Petition explains, these Rules could be read to require that a carrier's eligibility for high-cost loop support ("HCLS") be determined by its local rates in effect on January 1, 2012, a date two days after the Order become effective. Such a requirement would make it impossible for many local exchange carriers, including many small incumbent local exchange carriers ("ILECs") in Minnesota, to have met the rate floor requirements as of January 1, 2012, because applicable notice and procedural timelines under Minnesota law could not be met by January 1, 2012.

The Petition provides a very brief overview of timelines for the filing and implementation of tariff amendments under Minnesota statutes. The specific timelines and requirements that apply to local rate increases for small ILECs in Minnesota are in three categories, as follows:

- a) A "small telephone company" (an ILEC with fewer than 50,000 subscribers) which is under alternative rate regulation as described in Minn. Stat. § 237.773 is required to provide 60 days' advance written notice to each of its customers and to the Minnesota Department of Commerce ("MDOC") and/or the Minnesota

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<sup>2</sup> Independent Telephone and Telecommunications Alliance, National Exchange Carrier Association, National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance (collectively, the "Petitioners").

<sup>3</sup> *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime: Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket 05-337, CC Docket No. 01-92, FCC 11-161 (2011) (the "Order").

Public Utilities Commission (“MPUC”) if the rate increase is allowed under Minn. Stat. § 237.773, Subd. 3.<sup>4</sup> If more than five percent of the customers or 500 customers (whichever is fewer) have petitioned for investigation of the proposed rate increase within 45 days of the notice, the rate increase may be subject to investigation.

- b) A small ILEC which is not under alternative rate regulation as provided in Minn. Stat. § 237.773, and which has one or more competitive local exchange carriers (“CLECs”) authorized to provide local services in its service area, is required to provide 20 days advance notice of a proposed rate increase to customers and the MPUC pursuant to Minn. Rule 7811.1050.
- c) In practice, other small ILECs (which either have no CLECs in their service territories or which are not under alternative rate regulation) are also required to provide 20 days advance notice of a proposed rate increase to customers and the MPUC under prevailing practice and interpretations of the MDOC.

Many MIC members are subject to alternative rate regulation under Minn. Stat. § 237.773 and are therefore required to provide at least 60 days prior written notice of proposed local rate increases and are subject to the potential investigation of a rate increase, which would further delay its implementation. All other MIC members are required to provide at least 20 days prior written notice of local rate increases and are subject to possible investigation of increased rate (and corresponding delay in implementation).

At least nine MIC member companies made filings and gave required notices to increase local rates, in order to meet HCLS eligibility criteria. None of these filings were effective, under the Minnesota laws and rules cited above, as of January 1, 2012, because none of these filings met the applicable 60 day or 20 day advance written notice requirements. Further, it was not possible to meet the prior written notice requirements because the effective date of the Rules

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<sup>4</sup> Minn. Stat. § 237.773, Subd. 3 allows small ILECs to propose a limited category of local rate increases to become effective one year (or more) following election of alternative rate regulation and generally allows small ILECs to propose local rate increases to become effective two years (or more) following election of alternative rate regulation.

establishing the rate floor requirements did not allow sufficient time to meet the requirements of Minnesota law. Additional filings by MIC member companies to increase local rates are expected to occur, and clearly none of these will be effective as of January 1, 2012.

The MIC agrees and joins with the Petition in these observations:

An interpretation of the rules that holds fast to a January 1 deadline for compliance with the “rate floor” contradicts the very purpose for which the rule was adopted. The rule was presumably *not* adopted to penalize carriers for failing to increase local rates six months in advance of the date by which those rates matter. Rather, the rule was adopted because the Commission found it “inappropriate to provide federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability.” In other words, the intent was to encourage carriers to increase local rates to the level of the rate floor so that HCLS payments would be more equitably distributed among all recipients, rather than “over-subsidizing” in the Commission’s view some who maintained “significantly lower” rates. But, if the rates for purposes of this rule were considered “locked in” as of January 1, 2012, then this does nothing to achieve the policy objectives of consumer equity, nor does it do anything to encourage carriers to rationalize their rates – it simply penalizes carriers who might otherwise have taken steps between the effective date of the Order and June 30, 2012 (or thereafter) to increase their rates.<sup>5</sup>

Penalizing small ILECs for failing to meet an impossible deadline to implement local rate increases to meet the local rate floor would not benefit consumers. An interpretation disqualifying small ILECs from eligibility for HCLS would impose a retroactive penalty on small Minnesota ILECs since the small ILECs could not comply with the new requirements of the Rules, consistent with their notice obligations under Minnesota law.

Further, as described above, actions by regulators under Minnesota law may cause substantial additional delays in the actual implementation of local rate increases. Accordingly, the MIC joins in the request made in the Petition that the Commission also clarify the

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<sup>5</sup> *Petition* at 5 (citations omitted).

relationship between Federal and state rates filing requirements, and specify a process under which LECs could implement a rate increase after July 1 in any given year, file an amended report pursuant to Section 54.313, and then “requalify” for full support thereafter for the remainder of that twelve month period.

**Conclusion.**

For the reasons described above, the MIC recommends that the Commission clarify its rules relating to the new “local urban rate floor” and HCLS, as described above.

Date: February 28, 2012

Respectfully submitted,

/s/ Richard J. Johnson

and

/s/ M. Cecilia Ray

Attorneys on Behalf of the Minnesota Independent Coalition