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September 4, 2012

Via Hand Delivery

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Petition for Waiver of Central Texas Telephone Cooperative, Inc.;
***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**

Dear Ms. Dortch:

Enclosed for filing in the above-referenced dockets is the Petition for Waiver of Central Texas Telephone Cooperative, Inc. ("Central Texas"). Central Texas seeks a waiver of the regression analysis model benchmarking rule to limit reimbursable capital and operating expenses for High Cost Loop Support ("HCLS") for 2012 and beyond.[1]

As detailed in the enclosed Request for Confidential Treatment, Central Texas requests that the Commission treat as confidential parts of the petition and supporting exhibits that contain confidential and proprietary information. Accordingly, Central Texas submits two (2) versions of the petition and supporting exhibits: (1) a non-redacted version that contains confidential and proprietary information; and (2) a redacted version for public inspection. Central Texas requests

[1] *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶¶ 210-26 (rel. November 18, 2011) ("*USF Transformation Order*"); *See* also *in re Connect America Fund*, WC Docket No. 10-90, *High-Cost Universal Service Support*, WC Docket No. 05-337, Order, DA 12-646 (April 25, 2012) ("*Bureau Order*") (adopting methodology to limit reimbursable capital and operating expenses for HCLS).

that the Commission treat the non-redacted version and the accompanying documents confidentially.

Please contact the undersigned with any questions.

Sincerely,

Kenneth C. Johnson
Counsel for Central Texas Telephone Cooperative, Inc.

Enclosures

cc: Sharon Gillett
Carol Mattey
Patrick Halley

Before the
Federal Communications Commission
Washington, DC 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
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Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

PETITION FOR WAIVER OF CENTRAL TEXAS TELEPHONE COOPERATIVE, INC.

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Counsel for Central Texas Telephone Cooperative, Inc.

Dated: September 4, 2012

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Summary

Central Texas Telephone Cooperative, Inc. ("Central Texas") respectfully requests that the Commission waive the application of the regression model benchmarking rule to limit reimbursable capital and operating expenses for High Cost Loop Support ("HCLS") for 2012 and beyond. Application of the FCC's regression model, in its current form, to Central Texas results in an incorrect conclusion that Central Texas's capital expenses are imprudent. This faulty conclusion will lead to the loss of broadband for numerous Central Texas customers. Specifically, the FCC's regression model does not take into account the legitimate cost factors such as extremely long loop lengths and demonstrated need to bury cable due to harsh, rocky terrain conditions. Absent a waiver, Central Texas will experience immediate and substantial harm resulting in a loss of approximately [redacted] in high-cost support through the end of 2013 and further loss of support in later years.

Central Texas serves less than 1.5 customers per square mile and just 1.8 access lines per square mile. Central Texas balanced the costs of using aerial cables against the costs of burying cable and determined that it costs less overall to bury cable, rather than constantly maintain and replace aerial cable. Unfortunately, this economically prudent engineering decision results in necessarily higher capital expenses ("capex") for Central Texas. By keeping its cable maintenance costs low, Central Texas has been penalized under the regression model even though its operational expenses ("opex") are just 45 percent of the opex cap. As a result, under the regression model, Central Texas is severely harmed by its higher, yet prudent, capital expenditures. The Commission has good cause to waive the strict application of its regression analysis model to Central Texas because a waiver will serve the public interest by ensuring that advanced telecommunications and broadband services continue to be available in Central Texas's rural study area.

Before the
Federal Communications Commission
Washington, DC 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
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Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

PETITION FOR WAIVER OF CENTRAL TEXAS TELEPHONE COOPERATIVE, INC.

I. INTRODUCTION AND SUMMARY

Central Texas Telephone Cooperative, Inc. ("Central Texas"), by its attorneys and pursuant to Section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") Rules,[1] respectfully requests that the Commission waive the application of the regression analysis model benchmarking rule to limit reimbursable capital and operating expenses for High Cost Loop Support ("HCLS") for 2012 and beyond.[2] In the April 25, 2012 *Bureau Order*, the Commission's

[1] 47 C.F.R. § 1.3.
[2] *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶¶ 210-26 (rel. November 18, 2011) ("*USF Transformation*

Wireline Competition Bureau ("Bureau") substantially and extensively revised the original version of its proposed high-cost loop regression analysis model ("regression model"), first announced in a December 2, 2011 Public Notice,[3] that is being used to determine carrier-specific limits on HCLS payments to rate-of-return carriers. While Central Texas appreciates the Commission's efforts to reform universal service and prevent waste, fraud, and abuse, application of the FCC's regression model, as adopted, to Central Texas results in an incorrect conclusion that Central Texas's capital expenses are imprudent. This erroneous conclusion, as demonstrated below, will lead to the loss of broadband for numerous Central Texas customers. The lack of sufficient support for Central Texas's prudent and justifiable expenditures violates Section 254 of the Communications Act of 1934, as amended ("Act").[4]

Central Texas is a rate-of-return, cost-based incumbent local exchange carrier ("ILEC") and eligible telecommunications carrier ("ETC") that provides telecommunications and broadband services to customers in remote portions of the Central Texas service area. As demonstrated below, good cause exists to grant Central Texas's request for waiver. Specifically, the FCC's regression model does not take into account the legitimate cost factors Central Texas encounters in its provision of high-cost telecommunications service in the Central Texas service area. Further, the regression model's conclusion that Central Texas's capital expenses lack "prudence" is demonstrably false, lacking any rational connection to the facts, and contrary to Section 254 of the

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Order"); *See* also *in re Connect America Fund*, WC Docket No. 10-90, *High-Cost Universal Service Support*, WC Docket No. 05-337, Order, DA 12-646 (April 25, 2012) ("*Bureau Order*") (adopting methodology to limit reimbursable capital and operating expenses for HCLS).

[3] *See Notice Concerning Universal Service Intercarrier-Compensation Transformation Proceeding*, Public Notice, DA 11-1966 (December 2, 2011) ("*Regression Model Public Notice*").

[4] *See* 47 U.S.C. § 254(b)(5) (requiring "predictable and sufficient" universal service support mechanisms).

Act. Absent a waiver, Central Texas will experience immediate and substantial harm resulting in a loss of close to [redacted] in high-cost support through the end of 2013 and further loss of support in later years if Central Texas remains subject to the Bureau's faulty regression model.[5]

II. STATEMENT OF FACTS

A. Density Characteristics

Central Texas's vast service area features rugged, dry, rocky, and oftentimes windy terrain requiring extremely long underground loops and presenting significant challenges in the deployment and maintenance of the Central Texas telecommunications network. Central Texas serves 3,272 total square miles. Central Texas has [redacted] customers and serves [redacted] access lines. That translates to less than 1.5 customers per square mile and just 1.8 access lines per square mile. By way of comparison, in the 2011 *Telergee Alliance Benchmark Study*,[6] the median of 232 rural telephone companies studied served 7.4 access lines per square mile. Central Texas's demonstrably lower density is the primary driver of its need for higher capital investment levels.

Central Texas serves 7,119 road miles. The vast majority of these roads – comprising 6,077 road miles – are "Local Neighborhood/Rural/City Street"[7] roads. 640 miles of road are classified

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[5] Central Texas filed an Application for Review in the instant proceeding on May 25, 2012 outlining specific faults with the Bureau's regression analysis model. Central Texas notes that if certain flaws are corrected in the regression analysis model, as noted in the Application for Review, Central Texas's need for a waiver of the application of the regression model would be diminished or eliminated.

[6] Launched in 1996 as a reliable source of rural telecommunications performance data, the *Telergee Alliance Benchmark Study* comprises information gathered from 232 rural telecommunications companies across the country. *See* http://telergee.com/benchmark.htm.

[7] Central Texas used U.S. Census TIGER road categories to make this calculation. *See* Appendix F – MAF/TIGER Feature Class Code (MTFCC) Definitions, pages F-186 and F-187 at http://www.census.gov/geo/www/tiger/tgrshp2010/documentation.html. "Local Neighborhood/Rural/City Street" roads are defined as "[g]enerally a paved non-arterial street, road or byway that usually has a single lane of traffic in each direction."

under the "Secondary Road"[8] category. Central Texas has less than one mile of the "Primary Road"[9] category in its service area. These road classifications demonstrate the overwhelmingly rural nature of the Central Texas service area.

In the *Bureau Order* establishing the benchmarking methodology at issue, the Bureau concluded that "cable generally follows roads, so the number of road miles in a study area should correlate with the cabling required to serve that area."[10] The *Bureau Order* adopts road miles as a proxy that, in theory, takes into account the Commission's recognition of the higher costs associated with long loops.[11] However, for carriers with long loops and recognized higher costs such as Central Texas, the regression model contrarily calculates road miles as a negative coefficient. In other words, the more road miles served by a carrier (the proxy for long loop length), the lower its allowable expense thresholds become. Thus, the regression model's use of road miles as a proxy has the opposite and unintended effect of penalizing Central Texas rather than recognizing Central Texas's higher costs due to long loop lengths and high number of rural road miles.

The main and most densely populated town served by Central Texas is San Saba, Texas.[12] Within San Saba's 1.8 square miles, Central Texas has [redacted] customers and serves [redacted] access lines.

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[8] *Id.* (defining a "Secondary Road" as "main arteries, usually in the U.S. Highway, State Highway or County Highway system.")

[9] *Id.* (defining a "Primary Road" as "[g]enerally divided, limited-access highways within the interstate highway system or under state management, and are distinguished by the presence of interchanges.") Since the small chunk of Primary Road in question is actually a county road, which is by definition a Secondary Road, Central Texas suspects the Primary Road designation is an error/anomaly.

[10] *See Bureau Order* at ¶ 86.

[11] *See Id.* at ¶¶ 21 and 86.

[12] Central Texas's corporate headquarters are in Goldthwaite, Texas, a town of similar size as San Saba. Goldthwaite, however, is served by Verizon.

The town of San Saba has a population of 3,099. Outside of the small town of San Saba, Central Texas serves an extremely remote and dispersed population. Outside of San Saba, Central Texas serves just 1.2 customers per square mile and provides just 1.45 access lines per square mile. In addition, outside of San Saba, Central Texas serves 0.55 customers per road mile and provides service to 0.67 access lines per road mile. Accordingly, most of Central Texas's customers are spread thinly throughout Central Texas's study area, resulting in exceptionally long loop lengths and associated high costs.

The geography of Central Texas's service area dictates the burying of cable and concomitant higher capital expenditures. Central Texas operates in a dry region where temperatures reach the 90's in the spring and hover in the 100's throughout the summer. High winds and violent thunderstorms provide the only variation from the hot, dry weather. Winter temperatures can dip below freezing and the abundant wildlife in Central Texas is notorious for destroying any cable that is not buried underground. These factors require the burying of cable plant, which increases costs and the need for higher capital levels, expenses exacerbated by the long loops served by Central Texas.[13]

Central Texas's service area is further characterized by rocky cliffs and thick surface bedrock.[14] Central Texas uses rock cutters to bury cable plant, leading to higher capital expenses. Central Texas balanced the costs of using aerial cables against the costs of burying cable and determined that it costs less overall to bury cable, rather than constantly maintain and replace aerial

[13] Weather and terrain-based telecommunications challenges were on display after the July 2012 "derecho" in Washington, D.C. and the surrounding area. One lesson the derecho provided D.C. locals was that buried cable is more reliable than exposed aerial cable. As discussed below, Central Texas relies on buried plant for reliability and, in the long run, lower maintenance costs.
[14] *See* Letter from Kenneth C. Johnson, Counsel for Central Texas, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et. al.* (March 5, 2012).

cable in the windy, tough, varmint-ridden Texas terrain. Unfortunately, this economically prudent engineering decision results in necessarily higher capital expenses ("capex") for Central Texas. Central Texas has significantly lowered its operational expenses ("opex"). Central Texas's current opex is $480. The regression model caps Central Texas's opex at $1,063. Central Texas receives no credit from the regression model for keeping its cable maintenance costs low even though its opex is just 45 percent of the regression model's opex cap. As a result, under the regression model, Central Texas is severely harmed by its higher, yet prudent, capital expenditures, even when it has low and exceedingly prudent operational expenditures. This result is a deterrent to employing an overall cost-cutting strategy and encourages long-term inefficiencies.[15]

The FCC's regression model algorithm raises the opex threshold and lowers the capex threshold when bedrock is present, thus ignoring Central Texas's prudent capital expenditures. Central Texas has made a justifiable engineering decision to bury cable in order to keep opex costs low and should not be penalized for this prudent investment decision by application of the regression model.

B. Alternative Providers

Central Texas is the only provider of terrestrial voice services in its study area. AT&T, Sprint, and West Central Wireless provide 3G wireless voice services in portions of the Central Texas study area. There are numerous areas where Central Texas is the only provider of telecommunications services since the cost of extending wireless services into many remote parts of Central Texas is prohibitive. All three wireless providers rely on Central Texas for backhaul

[15] The Commission should consider collapsing the opex and capex results into one overall loop cost output. This would encourage carriers to make prudent cost-cutting decisions based on their own individual circumstances, rather than making decisions based on capex and opex cap outcomes.

services and access to the public switched telephone network.[16] Central Texas is, to the best of its knowledge and belief, the only provider of commercially available backhaul services in its study area.[17]

Central Texas is the only provider of terrestrial broadband in its study area, other than in the small town of San Saba. San Saba consumers can purchase broadband services from Suddenlink, a cable provider, within the 1.8 square mile San Saba town area. Outside of this 1.8 square mile area, Central Texas is the only provider of terrestrial broadband services in the remaining 3,270 square miles it serves in rural Texas. Central Texas even provides backhaul services to Suddenlink.

C. Accounting for Unused or Spare Equipment

Unused or spare equipment or facilities are booked in accordance with FCC Part 32 Rules. Such accounting procedures primarily relate to spare, redundant, or dedicated-in-place equipment that is more cost effective to place into service at the time of original construction of the network, rather than going back and adding to the network at a later date. In these cases, Central Texas records this spare equipment into the specific Part 32 accounts at the time the particular route becomes active and supports traffic. The most significant spare facilities account that affects Central Texas's universal service support levels is Account 2410, Cable & Wire Facilities. Central Texas follows the National Exchange Carrier Association's ("NECA") interpretation of Section 36.153 of the FCC's Rules in the apportionment of spare facilities. Based on the NECA interpretation, Central Texas assigns spare facilities to separations categories such as Category 1-Exchange Line, Category 2-Wideband and Exchange Trunk, and Category 3-Interexchange based on

[16] In addition, T-Mobile uses Central Texas for backhaul but does not provide service in the Central Texas study area.
[17] This includes satellite providers.

active, or in service, facilities. Central Texas does not assign any spare facilities directly to a category, such as Category 1 – Exchange Line, based on future intent or plans.

D. Corporate Operations

Central Texas uses a fully distributed cost methodology to allocate corporate expenses and overhead to regulated and non-regulated accounts, as well as affiliated companies. Corporate operations expenses are directly assigned in all cases where identifiable. Expenses that are unable to be directly assigned are allocated via a direct or indirect relationship either in the monthly financial records or during the annual separations or cost study process.

The direct assignment of costs, particularly labor costs, starts with all employees directly assigning their time on their daily timesheets. When reporting time, all employees, including those in management, first determine the company for which they are working and record their time accordingly. As the employee is performing services, they directly assign time to the account, business segment, or task they are performing. This direct assignment of time is valued at the employee's prevailing wage rate.

Direct allocations of costs, such as benefits, are done via the company's accounting system which allocates associated employee benefits, such as health insurance, to the same account, segment or task using the directly assigned hours as the basis. Central Texas uses a variety of indirect allocations to assign joint and common costs to the various regulated and non-regulated accounts during the annual cost study process.

Central Texas's total regulated corporate operations expense for 2011 was [redacted]. This amount does not include the approximately [redacted] of labor directly assigned, and [redacted] of benefits directly allocated to non-regulated accounts and affiliates during 2011. In addition, as

shown in Exhibit 1, [redacted] was removed during the annual cost study. Specific details on the make-up of corporate operations expenses such as corporate salaries, the number of employees, the nature of any overhead expenses allocated from affiliated or parent companies, and other expenses are attached as Exhibit 2.

E. End User Rate Plans

Information regarding Central Texas's end-user rate plans, including standard residential rates and plans that include local calling, long distance, Internet, texting, and/or video capabilities is attached as Exhibit 3.

F. Services Other Than Voice Provided over USF Plant

A list of services other than voice telephone services, including DSL and special access provided over the universal service supported plant, is included in Exhibit 3.

G. Procedures for Allocating Shared or Common Costs between Regulated and Non-Regulated Services or Operations

As discussed above, Central Texas uses a fully distributed cost methodology to allocate shared and common expenses and overhead to regulated and non-regulated accounts, as well as affiliated companies. Expenses are directly assigned in all cases where identifiable. Expenses that are unable to be directly assigned are allocated via a direct or indirect relationship either in the monthly financial records or during the annual cost study process. Direct allocations of costs, such as benefits, are done via the company's accounting system which allocates associated employee benefits, such as health insurance, to the same account, segment or task using the directly assigned hours as the basis. Central Texas uses a variety of indirect allocations to assign joint and common costs to the various regulated and non-regulated accounts during the annual cost study process. However, since Central Texas's emphasis is on directly assigning costs whenever possible, and

corporate affiliates conduct the bulk of non-regulated activities, joint and common costs are fairly immaterial to the overall operation of Central Texas. Central Texas expenses after direct assignment and allocation of costs in the accounting records were [redacted] on December 31, 2011. An additional [redacted] was removed during the annual cost study related to joint and common costs. A summary of Central Texas's joint and common cost allocations is included in Exhibit 1.

H. Audited Financial Statements

Audited financial statements for Central Texas for years 2009-2011 are attached as Exhibits 4 and 5.

I. Outstanding Loans

Central Texas has approximately [redacted] of Rural Utilities Service ("RUS") debt to be repaid from 2012 to 2022. Additional information regarding outstanding loans, including lender loan terms is attached as Exhibit 6.

J. Five-Year Pro Forma Financial Analysis

Central Texas has a high percentage of depreciated assets. Specifically, Central Texas has a high depreciated plant to total plant ratio. Central Texas has incurred substantial expenditures for new high-speed broadband plant, but these expenditures fail to significantly move its depreciated plant to total plant ratio. Consequently, this depreciated plant ratio, while based on readily available data and easy to calculate, fails as a reliable predictor of excessive spending. Attached as Exhibit 7 is an internal analysis conducted by Central Texas predicting Central Texas's financial performance under the new universal service rules. This analysis demonstrates that Central Texas will be denied approximately [redacted] in universal service support in 2013. If Central Texas were

to recover these lost revenues from its customers in 2013, it would have to raise its access line rate by approximately [redacted] per line per month – a result that would lead to higher and unreasonable rates in violation of Section 254 of the Act.[18]

As noted above, Central Texas has approximately [redacted] of RUS debt to be repaid from 2012 to 2022 and the regression limitations create tremendous uncertainty as to whether or not this debt can be repaid. Exhibit 6 summarizes the years in which principal on the RUS loan comes due. Central Texas has been extremely diligent using and repaying its loans. In fact, over the last few years Central Texas has concentrated on using general funds to finance construction as it repaid its historic debt. Exhibit 8 provides a summary of Central Texas's cash flow.

All of the universal service support Central Texas receives is invested in its network. Between 2009 and 2011, Central Texas received [redacted] in total universal service support and, during that time period, spent [redacted] on network plant and repayment of loans to construct plant. Specifically, from 2009 to 2011, Central Texas invested [redacted] in telephone plant and equipment and paid down its RUS debt by [redacted]. During those years, Central Texas generated operating cash flow of [redacted]. In other words, roughly [redacted] percent of Central Texas's total cash flow was put right back into the network.

Central Texas made a substantial investment in its network with the understanding that universal service funds would be available to cover the debt and operating cash utilized for construction. The new plant or "undepreciated plant" ratio in the regression model fails to identify prudent costs since Central Texas has spent significant funds in recent years deploying its network,

[18] 47 U.S.C. §§ 254(b)(1) and (3) (requiring "affordable" services and "comparable" rates to urban areas).

and since Central Texas chose to maximize the use of copper, the regression model incorrectly limits Central Texas's support.

K. Identification of Specific Facilities to Be Taken Out of Service

Central Texas does not anticipate taking facilities out of service, outside of normal course retirement, as a result of the anticipated reduction in universal service support. However, Central Texas's plans to deploy broadband to make it available upon reasonable request (4Mbps/1Mbps) will be delayed and possibly halted completely. In the immediate future, this strict application of the regression model will affect [redacted] customers that will not be able to receive 4/1 service upon request.[19] Absent a waiver grant, these customers will never see mandated 4/1 broadband service,[20] contrary to the intent of the Act[21] and the Commission's *USF Transformation Order*. In addition, voice-based services will deteriorate as high-cost funding dwindles (see Exhibit 7) and the necessary funds to maintain Central Texas's extremely long loops disappear.

III. THE PUBLIC INTEREST WILL BE SERVED BY A WAIVER OF A STRICT APPLICATION OF THE REGRESSION MODEL TO CENTRAL TEXAS.

The Commission has good cause to waive the application of its regression analysis model and benchmarking rule to Central Texas. The Commission adopted its benchmarking rule to moderate the expenses of those rate-of-return carriers with very high costs compared to their similarly situated peers, while further encouraging other rate-of-return carriers to advance broadband deployment.[22] In its April 25, 2012 *Bureau Order*, the Commission adopted the specific

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[19] Had Central Texas not put its high-cost support back into its network, even more customers would be without robust high speed broadband.
[20] *USF Transformation Order* at ¶ 93.
[21] *See* 47 U.S.C. § 254(b)(3) (requiring supported services in rural regions "that are reasonably comparable to those services provided in urban areas.")
[22] *USF Transformation Order* ¶¶ 210-26.

regression analysis methodology for establishing such limits or "benchmarks" for high cost loop HCLS.[23] The model creates caps for capital and operating expenses. These caps are set at the 90th percentile and any costs incurred by a company beyond the 90th percentile are ineligible for recovery. The regression model leads to erroneous, arbitrary, and confiscatory results when applied to Central Texas. Specifically, Central Texas's justifiably higher capital expenses have been unfairly limited by application of the regression model, while Central Texas is given no credit for keeping its operating expenses low. The FCC's regression model does not take into account the legitimate cost factors, discussed herein, that Central Texas encounters in its provision of high-cost telecommunications service in Central Texas. As a result, Central Texas will lose close to [redacted] in universal service support in 2013.

As a threshold matter, the model, by definition, is supposed to allocate support for high-cost *loops*. The model simply does not provide sufficient support for Central Texas's high cost loops. Grant of the requested waiver would serve the public interest by preventing the deterioration of voice service and other essential broadband services, and allowing Central Texas to receive sufficient USF support to provide broadband service to its customers upon request, consistent with the *USF Transformation Order* and the purposes of Section 254 of the Act.

The Commission may waive any of its rules if the petitioner shows "good cause."[24] In its *USF Transformation Order*, the Commission specifically anticipated that certain carriers would

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[23] Specifically, the methodology implements the Commission's rule, adopted in the *USF Transformation Order*, to limit reimbursable capital and operating costs for purposes of determining HCLS by using benchmarks for reasonable costs among similarly situated rate-of-return carriers. *See id.* at ¶ 220.

[24] 47 C.F.R. § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

require a waiver of its new universal service fund ("USF") rules in circumstances where waiver of such rules would be necessary and in the public interest and where an ETC can demonstrate that, without additional universal service funding, its support would not be sufficient to achieve the purposes of Section 254 of the Act.[25] Furthermore, a waiver may be granted if: 1) the waiver would better serve the public interest than would application of the rule; and 2) special circumstances warrant a deviation from the general rule.[26] Circumstances that would justify a waiver include "considerations of hardship, equity, or more effective implementation of overall policy."[27] Generally, the Commission may grant a waiver of its own rules if the relief requested would not undermine the policy objectives of the rule in question, and would otherwise serve the public interest.[28]

A. Application of the Regression Model Will Cause Deterioration to Voice Services and Stall Broadband Implementation in Central Texas's Service Area.

Absent a waiver of the benchmarking rule's use of the regression model, all Central Texas subscribers would be harmed by the resulting deterioration of voice service and many Central Texas subscribers would be harmed by the resulting cancellation of broadband service. Central Texas is the only terrestrial voice and broadband provider in all of its service area with the exception of the town of San Saba and its wireless voice and broadband service competitors provide only wireless service with limited coverage. Further, Central Texas is the only provider of terrestrial-based voice services, including emergency services, in its remote, rural study area. Such service is critical for its scattered customer base, law enforcement, schools, hospitals, and public safety entities. Central

[25] *USF Transformation Order at* ¶¶ 539-540.
[26] *Northeast Cellular*, 897 F.2d at 1166.
[27] *WAIT Radio*, 418 F.2d at 1159.
[28] *Id.* at 1157.

Texas also provides the critical support backbone for mobile services. Central Texas provides vital broadband services to schools, hospitals, and local and federal government facilities. Additionally, competitive broadband services are limited to the small town of San Saba.

B. Application of the Benchmarking Rule's Regression Model Would Cause Undue Hardship, be Inequitable to Central Texas, and Its Waiver Would Better Serve the Public Interest than Application of the Rule.

In 1996, Congress built upon the longstanding principle that *all* Americans should have access to communications services by enacting Section 254 of the Act. Section 254 set forth six principles to serve as the base policies for the preservation and advancement of universal service.[29] Among these principles are that "[q]uality services should be available at just, reasonable, and affordable rates," that "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation," and that "[c]onsumers in all regions of the Nation… should have access to telecommunications and information services, including… advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas" and at reasonably comparable rates.[30] When Central Texas's broadband expansion plans are stymied due to lack of support, its customers will be denied comparable services to urban consumers, in violation of the Act.

Grant of the requested waiver is consistent with both the underlying purpose of the *USF Transformation Order* and Section 254(b) of the Act. As discussed above, grant of the requested waiver is essential to ensuring the continued and future availability of broadband service to most of the population residing in Central Texas's service area. Moreover, the only way to ensure that the

[29] *See* 47 U.S.C. § 254(b).
[30] *See Id.*

rates charged by Central Texas are reasonably comparable to those charged for similar services in urban areas is to continue to allow Central Texas to receive the high-cost support it needs to provide voice services and broadband service. Central Texas has already raised its local rates pursuant to the FCC's rate floors.[31] Any further raise would be unreasonable. Granting a waiver in this instance is consistent with the intent of the FCC in establishing a waiver process that recognizes that carriers with "individualized circumstances"[32] such as extremely long loop lengths and recognized terrain issues may warrant specialized relief. Waiver is also consistent with the Commission's "obligation to consumers . . . to ensure that they receive supported services," including broadband.[33]

Grant of the requested waiver is consistent with the Commission's expectation that "[w]aiver would be warranted where an ETC can demonstrate that, without additional universal service funding, its support would not be 'sufficient to achieve the purposes of [section 254 of the Act].'"[34] Section 254 requires that high-cost support be sufficient and to ensure that rural consumers have access to similar services offered in urban areas of the country.[35] With the loss of high-cost support leading to scaled-back plans for broadband expansion into unserved areas, the strict application of the regression model is contrary to the clear mandate of Section 254 of the Act since it would leave rural Central Texas consumers in unserved areas without access to similar supported broadband services offered in urban areas of the country. Central Texas has no reasonable alternative but to ask for the requested relief. Central Texas cannot reduce its costs

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[31] *USF Transformation Order* at ¶ 133.
[32] *USF Transformation Order* at ¶ 539.
[33] *USF Transformation Order* at ¶ 222.
[34] *USF Transformation Order* at ¶ 540.
[35] 47 USC § 254(b)(3).

further than projected. Central Texas is already leanly staffed and has reduced its costs, especially its operating costs, to the maximum extent feasible.[36] In order to continue to provide the level of service required of it by the Act and the *USF Transformation Order*, Central Texas must have a level of support beyond that permitted by strict application of the regression model.

The circumstances faced by Central Texas are similar to those faced by Allband Communications Cooperative ("Allband"), a carrier that was recently granted a waiver of various high cost universal service rules.[37] Like Allband, Central Texas's "service territory is difficult to serve and has very few customers."[38] And like Allband, "given the low population density in [its] service territory," Central Texas "also will not be in a position to increase its revenues from consumers in the short-term."[39]

As demonstrated above, good cause exists for grant of the requested waiver. Central Texas's high-cost loops require non-capped levels of support beyond that allowed by the new rules in order for Central Texas's customers to continue receiving statutorily required "comparable"[40] voice and broadband services in the vast majority of Central Texas's service territory in which there is no terrestrial broadband alternative. In view of the unusual factual circumstances of Central Texas's high-cost and challenging rural Texas service environment, strict application of the regression model to Central Texas would be inequitable and unduly burdensome, and in light of the harmful impact on Central Texas's customers, would clearly be contrary to the public interest.

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[36] Central Texas's salaries (Exhibit 2) are "modest." *See Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules,* Order, WC Docket No. 10-90 at ¶ 12. (WCB, rel. July 25, 2012).
[37] *Id.*
[38] *Id.* at ¶ 11.
[39] *Id.*
[40] 47 USC § 254(b)(3).

Grant of the requested waiver is consistent with the underlying purpose of Section 254 of the Act, and Central Texas has no reasonable alternative but to seek the requested waiver.

IV. CONCLUSION

Central Texas has followed the Commission's high-cost Rules for years, prudently putting its funding back into the network and providing advanced services and broadband to its remote, rural customers. Now, Central Texas is being unfairly penalized by the use of the FCC's regression model. For the reasons set forth herein, Central Texas respectfully requests that the Commission grant this *Petition for Waiver* and not strictly apply the regression model to Central Texas.

Respectfully submitted,

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Dated: September 4, 2012

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EXHIBIT 1

Central Texas Telephone Cooperative, Inc.

2011 CAM Summary

EXHIBIT 2

Central Texas Telephone Cooperative, Inc.

Salary Summary

EXHIBIT 3

Central Texas Telephone Cooperative, Inc.

Service Rates

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EXHIBIT 4

Central Texas Telephone Cooperative, Inc.

Audit Report 2009-2010

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EXHIBIT 5

Central Texas Telephone Cooperative, Inc.

Audit Report 2010-2011

EXHIBIT 6

Central Texas Telephone Cooperative, Inc.

RUS Principle Balance

EXHIBIT 7

Central Texas Telephone Cooperative, Inc.

Five Year Pro Forma

EXHIBIT 8

Central Texas Telephone Cooperative, Inc.

Cash Flow