

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

COMMENTS ON

**PETITION FOR WAIVER BY THE WEST VIRGINIA COMPANIES
OF SECTIONS 54.313(a)(10) and 54.318(i)
OF THE COMMISSION’S RULES OR, IN THE ALTERNATIVE,
REQUEST FOR TEMPORARY WAIVER AND SUPPORT FOR THE PENDING
REQUEST FOR RULEMAKING TO MODIFY SECTION 54.318(i) OF THE
COMMISSION’S RULES**

TO THE COMMISSION:

I. INTRODUCTION

The National Telecommunications Cooperative Association (NTCA) hereby submits comments on the February 5, 2013 petition of Armstrong Telephone Company – Northern Division, Armstrong Telephone Company – West Virginia, Hardy Telecommunications, Inc. and Spruce Knob Seneca Rocks Telephone, Inc. (collectively, the West Virginia Rural Companies). The West Virginia Rural Companies seek a permanent, on-going waiver of high-cost universal service rules 54.313(a)(10) and 54.318(i) or, in the alternative, a temporary waiver of both rules and then rulemaking to modify Section 54.318(i) of the Commission’s rules, which address the relationship of high-cost eligibility and end-user rates. Specifically, the West Virginia Rural Companies requests that the end-user rate benchmark set forth in Section 54.318(i) be applied to the weighted average of all of their respective local service plan rates in the state, rather than separately to each rate on a plan-by-plan basis. For the reasons set forth herein, NTCA supports the West Virginia Rural Companies’ petition generally, subject to well-defined limits intended to

maintain the integrity of the rule and prevent strategies that could undermine the goals of universal service.

II. DISCUSSION

Commission rule 54.318 requires an incumbent local exchange carrier's (ILEC's) rates to meet an urban rate floor in order for that carrier to obtain the full measure of high-cost support for which it is eligible. If a carrier's local service rates are beneath the rate floor, then that carrier's high-cost support will be reduced dollar-for-dollar. In the Commission's *Third Order on Reconsideration*¹ in the above captioned dockets, the Commission addressed local measured service rates. Specifically, the Commission prescribed that where local measured service rates are part of state rate plans, the local service rate reported by the ILEC "should reflect the basic rate for local service plus the additional charges incurred for measured service, using the mean number of minutes or message units for all customers subscribing to that rate plan multiplied by the applicable rate per minute or message unit."² The West Virginia Rural Companies explain the rule implies that the Commission will apply the rate floor standard to each rate plan a carrier might offer. The West Virginia Rural Companies also seek waiver of Section 54.313(a)(10) of the Commission's rules, which sets forth the rate comparability reporting requirements. In the alternative, the West Virginia Rural Companies seek temporary waiver of Sections 54.313(a)(10) and 54.318(i) and support a Commission rulemaking to modify Section 54.318(i) in order to provide an additional method for establishing local rates above the rate floor and assessing rate

¹ *Connect America Fund (Docket No. 10-90); A National Broadband Plan for Our Future (Docket No. 09-51); Establishing Just and Reasonable Rates for Local Exchange Carriers (Docket No. 07-135); High-Cost Universal Service Support (Docket No. 05-337); Developing a Unified Intercarrier Compensation Regime (Docket No. 01-92); Federal-State Joint Board on Universal Service (Docket No. 96-45); Lifeline and Link-Up (Docket No. 03-109); Universal Service Reform – Mobility Fund (Docket No. 10-208); Third Order on Reconsideration, FCC 12-52 (2012).*

² *Id.*, at para. 22

comparability when a carrier's customers may select from the options available based on state-required service plans that incorporate varying rate structures.

The West Virginia Rural Companies' petition arises out of the multiple local service rate plans each offers in response to the "specific manner in which the WVA PSC has established basic local service rates and rate plans."³ The West Virginia Rural Companies explain that among those plans, some are above and others are at or below the rate floor. Specifically, among the companies, the percentage of customers with plans below the rate floor ranges from six percent to 32 percent, and the percentage of customers above the rate floor ranges from 68 percent to 94 percent. For each of the West Virginia Rural Companies, however, the weighted average of their local service rates is above the rate floor.⁴ Accordingly, the overall goal of "ensur[ing] that the states are contributing to support and advance universal service" is met.⁵ If, however, the rate floor rule is applied to each rate plan, then the companies will each endure high-cost loop support decreases ranging from one percent to an astonishing 50 percent. That result certainly does not advance the goals of universal service.

High-cost funding is intended to support the costs of network deployment. Accordingly, total network costs for any given study area, rather than per-user costs, underlie determinations of network costs eligible for recovery. The use of a weighted average of all applicable rates best reflects the network-based cost recovery process and ensures that each recipient of high-cost loop support is making reasonable efforts to recover costs from end users prior to drawing upon such

³ Petition at 2.

⁴ Petition at 6.

⁵ *Connect America Fund (Docket No. 10-90); A National Broadband Plan for Our Future (Docket No. 09-51); Establishing Just and Reasonable Rates for Local Exchange Carriers (Docket No. 07-135); High-Cost Universal Service Support (Docket No. 05-337); Developing a Unified Intercarrier Compensation Regime (Docket No. 01-92); Federal-State Joint Board on Universal Service (Docket No. 96-45); Lifeline and Link-Up (Docket No. 03-109); Universal Service Reform – Mobility Fund (Docket No. 10-208): Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, at paras. 237, 238 (2011).*

support. In the case of the West Virginia Rural Companies, this use of multiple rate plans meets the state-prescribed local rate plans that have been promulgated by the state and the consumer needs that the state regulators determined should best be met, yet collectively generates rates that not only meet but exceed the rate floor. The use of the weighted average would favor sufficient network funding for a carrier's statewide (or study area-wide) network, and visit no harm upon the USF because the collective rates (and corresponding revenues) generated by the plans emerge above the rate floor.

The apparent intent of the Commission's rule is facially consistent with the intent to distribute high-cost support within a budget; the rate floor supports the proposition that end-user contribution to network costs is a requisite element in any network cost recovery process. That collective end-user contribution by West Virginia Rural Companies subscribers is consistent with the Commission's goal. Strict application of the Commission's rate floor rule to each of these schedules would, in contrast, erase the attention paid to fulfill local goals of not only universally available, but also universally subscribed, service. Inasmuch as high-cost support is distributed on a study area basis, the individual rates paid by some subscribers should be less instrumental than the collective rates earned across exchanges in that area.

For these reasons set forth above, NTCA generally supports the petition for waiver of the West Virginia Rural Companies, and also submits that any relief granted to West Virginia Rural Companies should apply in equivalent measure to similarly situated carriers. This support, however, is reserved for instances in which the averaging specifically either incorporates, relies upon, or is otherwise linked to a tariffed plan rate, except as noted below. NTCA opposes the use of weighted averaging that would respond to discretionary pricing strategies.

The West Virginia Rural Companies offer their rate plans in response to the WVA PSC's efforts to develop local rate calling plans that maximize West Virginia end user/consumer options

based on their local calling needs.”⁶ In contrast, absent a requirement that rate plans be connected to a tariff approved by a state regulator charged with the public interest, unscrupulous firms could develop targeted pricing strategies that offer below-market rates in some areas while charging captive consumers a premium in others. Moreover, the Commission must ensure that certification of rate offerings remain a transparent and administratively efficient process; the presence of a tariff facilitates that goal.

NTCA recognizes, however, that in some instances, a tariff may not be the device that governs rates.⁷ Therefore, NTCA proposes that the relief described herein be extended as well to cooperatives that are not subject to state tariff where those various rate plans are publicized and available throughout each study area served by the cooperative. Moreover, NTCA proposes that the same relief be available to commercial companies where a non-tariffed rate plan is (a) available throughout the provider’s entire service area in the state (as opposed to only select markets), and (b) published in some type of publicly available format, including, but not limited to, the company’s website.

In the alternative, West Virginia Rural Companies request the Commission to initiate a rulemaking to provide an additional method in rule 54.318(i) for measuring rates. For the reasons stated above, NTCA supports this request in order to ensure that rate floor calculations and the distribution of support in reliance thereof are consistent with the network cost recovery principles.

⁶ Petition at 4.

⁷ *See, e.g.* Oregon Revised Statutes 759.040 Section 5.

III. CONCLUSION

WHEREFORE the reasons set forth above and herein, NTCA requests the Commission to grant the West Virginia Rural Companies a permanent, on-going waiver of high-cost universal service rules 54.313(a)(10) and 54.318(i) or, in the alternative, a temporary waiver of both rules and then rulemaking to modify Section 54.318(i) of the Commission's rules, which address the relationship of high-cost eligibility and end-user rates.

Respectfully submitted,

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