Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

PETITION FOR RECONSIDERATION

of the

NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;
NTCA-THE RURAL BROADBAND ASSOCIATION;
EASTERN RURAL TELECOM ASSOCIATION;
and
WTA – ADVOCATES FOR RURAL BROADBAND

Pursuant to section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the Rural Associations listed above[1] seek reconsideration of the Commission's June 10, 2014 *Order* in the

[1] NECA is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally*, 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983). NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities. ERTA is a trade association representing rural community based telecommunications service companies operating in states

above-captioned proceedings[2] insofar as that *Order* affirms the methods that are to be used by the Wireline Competition Bureau (the Bureau) to develop the local service rate floor in 2014 and thereafter. Reconsideration is required at this time because data only recently made public by the Bureau (and presumably relied on by the Commission in affirming the Bureau's calculations) clearly demonstrate that the Commission's assumptions regarding methods used to calculate the rate floor were in error. As shown below, further review and reconsideration of alternative calculation methods are in order.

I. BACKGROUND

The Commission's 2011 *ICC/USF Order* adopted a rule whereby High-Cost Loop Support (HCLS) and high-cost model support would be reduced in instances where end-user rates for local exchange voice service plus state regulated fees fall below a certain level.[3] The rate floor was to be established based on a national average of urban rates for fixed local voice

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east of the Mississippi River. WTA is a national trade association that represents more than 250 rural telecommunications carriers providing voice, video and data services. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

[2] *Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 (rel. June 10, 2014) (*Order*).

[3] *See 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 – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) ¶¶ 234-247 (*ICC/USF Order*). *See also* 47 C.F.R. § 54.318.

service.[4] The Commission directed the Wireline Competition Bureau to collect survey data for use in setting a new local service rate floor for 2014, and annually thereafter.[5]

Several of the Rural Associations sought reconsideration of the Commission's decision to base the rate floor on an average of urban rates, and suggested instead the Commission base its rate floor on statistical analyses, with the actual floor based (for example) on one or more standard deviations below the average.[6] The Rural Associations explained at the time how use of a statistical measure *such as* the standard deviation would identify more accurately those carriers whose rates are so-called "artificially low" or beyond reasonable comparability.[7]

The Rural Associations also pointed out there is nothing "artificially low" about an end-user rate that is a penny or even a dollar below the national average; that the Commission has previously relied upon standard deviations to establish "reasonably comparable" rates for purposes of determining a rate ceiling; and that overall this approach would be more consistent with the "reasonable comparability" standard set forth in the Act.[8]

The Commission declined to adopt these suggestions, concluding specifically that adopting a rate floor that is two standard deviations below the urban average "could" result in a

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[4] *Id.* ¶¶ 237-238.

[5] *Id.* ¶¶ 239, 246.

[6] *See* Petition for Reconsideration and Clarification of NECA, OPASTCO, and WTA, WC Docket No. 10-90, at 13-14 (filed Dec. 29, 2011) (*Rural Association PFR*).

[7] *Id.* The Rural Associations explained that arithmetic averages can be influenced unduly by the presence of outliers, both above and below the mean. Even where rates are clustered closely to each other, inclusion of a substantially higher or lower figure can produce an average that deviates from the cluster. In contrast, the standard deviation method accommodates favorably a distribution of data across a range.

[8] *Id.* at 14. It bears noting in this regard that, by adopting the urban rate average as a rate floor, the Commission has essentially insured that rural rates will be generally higher than urban rates, rather than "reasonably comparable" as required by law.

rate floor "so low as to be meaningless."[9] The Commission noted the Rural Associations provided no analysis to support their request, and claimed that the proposal would have required it to reconsider its "broader determination that it is inappropriate for consumers across the country to subsidize the cost of service for some consumers that pay local service rates that are significantly lower than the national urban average."[10]

On April 3, 2013, the Wireline Competition and Wireless Telecommunications Bureaus released an *Order* containing the survey instrument they intended to use to gather information for calculating the rate floor, among other things.[11] The Bureaus concluded that survey respondents would be selected using FCC Form 477 data to create a statistically valid sample of all fixed terrestrial providers that serve urban census tracts in Metropolitan Statistical Areas (MSAs) across the country.[12] The *Order* also concluded that the average for the rate floor would be computed based on the non-promotional rate for stand-alone voice service.[13]

Nearly a year later, on March 20, 2014, the Bureau issued a brief Public Notice announcing a new 2014 local service rate floor of $20.46 – dramatically higher than the previous

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[9] *Connect America Fund*, WC Docket No. 10-90, *et al.*, Third Order on Reconsideration, 27 FCC Rcd. 5622 (2012) ¶ 23.

[10] *Id.* While the Commission criticized the Rural Associations for not providing sufficient "analysis" to support a two-standard deviation proposal, it did not appear to recognize that such analysis would have been impossible without access to the Bureau's subsequently gathered survey data. Nor did the Commission recognize that the Rural Associations did not actually suggest two standard deviations as <u>*the*</u> proposal for reconsideration; instead, as a review of the PFR reveals, the Rural Associations only *analogized* to the two-standard deviation approach in suggesting that the Commission should adopt some "range of reasonable comparability" around the urban average. *Rural Association PFR* at 14. In this regard, it would appear that the Commission never fully dispensed of the Rural Associations' petition with respect to this issue beyond finding that a two standard deviation approach was not acceptable, at least based upon the limited information available in 2012.

[11] *Connect America Fund*, WC Docket No. 10-90, Order, 28 FCC Rcd. 4242 (2013).

[12] *Id.* ¶ 8.

[13] *Id.* ¶ 13. The Bureau did not initiate the survey until December 2013, however.

rate floor of $14 established in the Commission's 2011 *ICC/USF Order*.[14] This figure was also materially higher than the 2011 expectation that the rate floor in 2014 would be "set at a figure close to the sum of $15.62 plus state regulated fees."[15] The Bureau did not provide any of the data or calculations underlying its new local service rate floor in excess of $20, but instead explained it had collected data on rates offered by providers of fixed services in 500 urban census tracts, and had calculated the rate floor based on data from 17 incumbents that indicated they provide flat-rate voice service in 135 urban census tracts. In the same Public Notice, the Bureau set the reasonable comparability benchmark for voice service (*i.e.*, the rate ceiling) at $46.96, a level found to be two standard deviations above the average.[16]

Several parties, including the Rural Associations and NARUC, expressed concerns regarding the basis for the Bureau's calculations.[17] In response, on April 18, 2014 (five days before the Commission was scheduled to consider an item on this topic at its April 23, 2014 Open Meeting), the Bureau released the data obtained in its survey to the public.[18]

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[14] *Wireline Competition Bureau Announces the Results of Urban Rate Survey for Voice Services; Seeks Comment on Petition for Extension of Time to Comply With New Rate Floor*, Public Notice, DA 14-384 (rel. Mar. 20, 2014) (*Public Notice*).

[15] *ICC/USF Order* ¶ 243.

[16] *Public Notice* at 2.

[17] *See* Reply Comments of NTCA, NECA, ERTA, and WTA, WC Docket No. 10-90, at 5 (filed Mar. 31, 2014). *See also* Reply Comments of ITTA and USTelecom at 6; Montana Telecommunications Association at 6; JSI at 4. In a petition filed April 15, 2014, NARUC explicitly asked the Bureau to release the data from the urban rate survey for public review, and requested the Commission seek comment on the methodology for calculating the rate floor benchmark. Petition of NARUC, WC Docket No. 10-90 (filed Apr. 15, 2014).

[18] *Wireline Competition Bureau Announces Posting of Voice Data From Urban Rate Survey, and Explanatory Notes*, Public Notice, DA 14-520 (rel. Apr. 18, 2014).

At its April 23, 2014 Open Meeting, the Commission partially granted a separate petition filed by ERTA, ITTA, NTCA, NECA, USTelecom, and WTA[19] that sought a delay in implementation of support reductions associated with the rate floor.[20] The *Order* establishing the phase-in schedule was released June 10, 2014.[21] There, the Commission made clear it would not reconsider or amend any other aspects of its rate floor policy or calculation methods.[22]

II. DISCUSSION

This Petition does not seek reconsideration of the Commission's decision to phase-in support reductions associated with the urban rate floor. Indeed, to the extent support reductions for "unreasonably low" rates are justified at all,[23] the Associations appreciate the Commission's efforts to ensure gradual implementation as opposed to an immediate flash-cut.

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[19] Petition for Extension of Time by ERTA, ITTA, NECA, NTCA, USTelecom, and WTA, WC Docket No. 10-90 (filed Mar. 11, 2014).

[20] *See FCC Takes Major Strides Toward Further Expansion of Rural Broadband*, News Release (rel. Apr, 23, 2014).

[21] *Order* ¶¶ 7, 80. The Bureau subsequently issued an Erratum to the description of the phase-in in paragraph 80 of the *Order*. The corrected text now states that the Commission will waive the application of section 54.318(b) for lines reported July 1, 2014, with a rate of $14 or above, and that, "[c]ommencing January 2, 2015 (reflecting rates as of December 1, 2014), and thereafter, through June 30, 2016, we waive section 54.318(b) to the extent reported lines are greater than or equal to $16. For the period between July 1, 2016, and June 30, 2017, we waive section 54.318(b) to the extent reported rates are greater than or equal to $18, or the 2016 rate floor, whichever is lower. For the period between July 1, 2017, and June 30, 2018, we waive section 54.318(b) to the extent reported rates are greater than or equal to $20, or the 2017 rate floor, whichever is lower." *See Connect America Fund*, WC Docket No. 10-90, *et al.*, Second Erratum (rel. July 11, 2014).

[22] *Order* ¶ 86.

[23] Contrary to claims, there are few instances where rural telephone companies charge rates of $5 or less for local exchange service. Of the approximately 3,500 lines with rates of $5 or less, only about 660 are used for the provision of local exchange service. The remaining lines are used to provide various forms of "warm dial tone" services such as emergency lines, etc.

Data only recently made available by the Bureau make clear, however, that the Commission should reconsider the specific methodology by which the rate floor is established.[24] The Rural Associations therefore seek reconsideration of the *Order* insofar as it reaffirms the Bureau's use of a weighted averaging method to produce the rate floor. Although concerns about this approach were originally raised in petitions seeking reconsideration of the Commission's 2011 *ICC/USF Order*, neither the Commission nor interested parties had any reasonable opportunity prior to release of the Bureau's underlying data and the Commission's subsequent *Order* to analyze or evaluate alternative approaches. Now that this information is available, however, the Commission should take this opportunity to "look under the hood" at the Bureau's calculations and reconsider its affirmation of the methodology used to calculate the $20.46 rate floor.[25]

The consequences of using the wrong calculation method are severe. Increasing the rate floor from $14.00 to $20.46 over the course of the next few years will increasingly impact rural consumers, with the number of affected lines rising from 40,114 in 2014 to over 1.5 million by

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[24] Section 1.429 of the Commission's rules permits parties to file Petitions for Reconsideration of actions taken in rulemaking proceedings, 47 C.F.R. § 1.429. In cases where a Petition relies on facts or arguments not previously presented to the Commission, the Petition must show that the facts or arguments relied on "were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity." 47 C.F.R. § 1.429(b)(2).

[25] No one outside the Bureau knew the specific methodology that would be utilized until mid-April of this year. For example, no one could have anticipated that the survey would cull 73 percent of census tracts from its statistically valid sample (362 out of 497 census tracts were dropped) nor that some unregulated rates would be treated differently from others. *See Order*, Statement of Commissioner Ajit Pai (approving in part and dissenting in part) at 283 n.31. Nor could anyone have anticipated that charges for measured or messaged service (services typically cheaper than unlimited local service) would be excluded entirely, and it still remains unclear how non-recurring charges were handled. Had the data been available, however, interested parties could have analyzed not only tariffed rates, but also how many subscribers actually pay those rates, which could have produced a much more meaningful average.

2018, ensuing impacts of rate increases or high-cost support reductions will rise from almost $2.6 million in 2014 to almost $81 million in 2018:

Rate Floor Transition Impacts[26]

	2014 @ $14	2015 @ $16	2016 @ $18	2017 @ $20	2018 @ $20.46
Lines Impacted by Rate Floor Adjustment	70,114	724,054	1,159,538	1,507,749	1,541,464
Annual $ Impact of Rate Floor Adjustment	$ (2,587,300)	$(16,391,762)	$ (40,179,781)	$ (72,447,631)	$ (80,897,099)

This chart shows that, even with a phase-in, over one million rural Americans can ultimately expect their local voice service rates to increase by up to 46 percent as the rate floor rises from $14.00 to $20.46 per month. These escalating rate increases "will harm access to service for some of the most vulnerable consumers in rural America . . .," "impose a disproportionate burden on older Americans, who are much more likely to be living on fixed incomes," [27] and result in less broadband deployment.[28]

Now that actual data on urban rates have been made available, it is apparent that the Commission's earlier rejection of the use of standard deviations in conjunction with the average rate to determine the rate floor was based upon assumptions that proved incorrect. Had the

[26] Based on rates in effect June 1, 2014.

[27] *See Order,* Statement of Commissioner Ajit Pai (approving in part and dissenting in part) at 279-280, *citing* letters from Public Knowledge, *et al.*, and AARP.

[28] Holding the rate floor to the urban average also ignores cost-of-living considerations and differences in income levels, as well as differences in the value of service that can be realized given massive disparities in the number of other persons and businesses situated within urban and rural local calling areas. *See* Reply Comments of WITA, CTA, ITA, NTA and OTA, WC Docket No. 10-90, at 3-6 (filed Mar. 31, 2014).

Commission agreed to use a statistical method, such as the standard deviation approach originally proposed *as an example* by the Rural Associations in this proceeding, the resulting rate floor would have been either $12.44 (based on a two-standard deviation standard) or $16.45 (based on a one-standard deviation standard). Neither rate would be so low as to be "meaningless," as the Commission once feared.

Indeed, rates within this range are commonly available in large cities, including Washington, D.C. and large areas of Washington State and Oregon, among other places.[29] A rate floor of $12.44 would be slightly below the current $14.00 level, but appears quite reasonable for purposes of determining when support payments should be reduced under the Commission's rate floor policy. A rate floor based on a one-standard deviation standard ($16.45) would represent a substantial increase above the current rate floor but would still be more reasonable than the rate produced by the weighted averaging method currently utilized.[30] Since this level is quite close to the first phase-in step planned for the $20.46 floor, use of a one-standard deviation approach might permit the Commission to use smaller increments for the phase-in, or shorten the overall phase-in period.

Either approach would significantly lessen potential adverse impacts on rural customers. For example, a rate floor based on one standard deviation would impact approximately 879,000 rural lines, rather than the more than 1.5 million affected by the $20.46 rate floor, and avoid

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[29] *See, e.g.*, Reply Comments of the Washington Utilities and Transportation Commission, WC Docket No. 10-90, at 2-3 (filed Mar. 31, 2014). *See also* Reply Comments of WITA, CTA, ITA, NTA and OTA, at 3-6.

[30] *See Order* ¶¶ 7, 80.

nearly $60 million in unnecessary rate increases or support reductions.[31] A rate floor based on two standard deviations would affect only about 38,000 lines and would avoid substantially all rate increases or support reductions.[32]

This is a time when rural customers should be introduced to the benefits of broadband rather than provoked to drop their wireline service by a series of annoying and increasingly burdensome voice rate increases. The Commission should also be encouraging carriers in lower-rate areas to invest in broadband deployments and upgrades, rather than imposing unnecessary reductions in HCLS based on voice service rates that are lower than the new rate floor but still within a reasonable range of the urban average. Moreover, using such statistical methods to establish the rate floor, as suggested above, would be comparable to the approach used by the Commission for setting the "reasonable comparability" benchmark for voice service (the rate ceiling), as well as the Commission's proposal to use a two-standard deviation standard for determining "reasonably comparable" broadband rates.[33]

Six months remain before additional support reductions begin under the phase-in schedule adopted in the *Order*. These six months present an opportunity for a thoughtful look at the issues presented. During this period, the Commission could provide an opportunity for public analysis and comment on the Bureau's data and potential alternative rate floor calculation

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[31] I.e., rate increases or support reductions in 2018 assuming a $16.46 rate floor is in effect would be approximately $21 million, as opposed to the approximately $80 million as shown above.

[32] I.e., rate increases or support reductions in 2018 assuming a $12.44 rate floor is in effect would only be about $1.6 million.

[33] *See Rural Association PFR* at 14. *See also, e.g.*, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-Rural Incumbent Local Exchange Carrier*, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd. 4072 (2010) ¶ 43, n. 144; *ICC/USF Order* ¶¶ 592, 1026.

methods, well before any higher rate floors take effect.[34] To avoid the need for companies to take further steps to increase rates unnecessarily during the remaining months of 2014, the Commission should also consider staying implementation of additional phase-in steps mandated by the *Order* pending full consideration of alternative rate floor calculation options in the context of a reconsideration proceeding or, if necessary, a further rulemaking proceeding.

III. CONCLUSION

Analysis of the data only recently made available to the public demonstrates that using standard deviations in conjunction with the weighted average rate to establish the local service rate floor would produce reasonable results consistent with the Commission's overall policy goals in this proceeding. The Associations accordingly request the Commission reconsider its reaffirmation of the 2014 rate floor of $20.46 produced using a weighted arithmetic average, and consider alternative methods, such as the standard deviation statistical approach previously

[34] In addition to re-evaluating whether it is reasonable and equitable to set the rural rate floor at the urban rate average (i.e., a level that *exceeds* the voice service rates paid by approximately half of all urban customers), the Commission should permit parties a reasonable opportunity to evaluate the survey data to determine where, for example, rates included in the survey data actually reflect "extra" items beyond basic local exchange services and whether reported rates fully reflect credits and other items that, if ignored, would tend to inflate (or deflate) the average.

suggested by the Rural Associations in this proceeding, for setting the rate floor. Pending such reevaluation, the Commission should stay implementation of the phase-in schedule described in its June 10, 2014 *Order*.

Respectfully submitted,

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