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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform	)	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

COMMENTS OF
ALEXICON TELECOMMUNICATIONS CONSULTING

Alexicon Telecommunications Consulting (Alexicon) hereby submits provides these comments in response to the Further Notice of Proposed Rulemaking adopted by the Commission in the above-captioned dockets.[1]

Alexicon provides professional management, financial and regulatory services to a variety of small rate-of-return (RoR) Incumbent Local Exchange Carriers (ILECs) and their affiliates who serve diverse geographical areas characterized by rural, insular or Native American Tribal Lands. These ILECs, similar to most other small rate-of-return regulated ILECs, not only provide a wide range of technologically advanced services to their customers but also are providing customers in rural, insular and Tribal areas with services equal to or greater than urban areas, and at comparable pricing. Furthermore, these ILECs are committed to providing their customers with innovative solutions, by adapting technologies that fit rural America, including Broadband and IP-enabled services.

[1] *In the Matter of Connect America Fund*, Further Notice of Proposed Rulemaking, WC Docket No. 10-90, et al., released June 10, 2014 (*FNPRM*)

I. PUBLIC INTEREST OBLIGATIONS

In the *FNPRM*, the Commission proposes to increase the downstream broadband speed standard to 10 Mbps.[2] By raising the downstream speed standard from 4 Mbps to 10 Mbps, the Commission apparently believes that this new standard will, eventually, narrow the gap between high speed broadband availability in urban and rural areas. The downstream broadband speed standard chosen, 10 Mbps, was derived, in part, by an analysis of the data collected and made available by State Broadband Initiative (SBI) that shows the status of broadband availability across the country. According to the Commission, "33 percent of the population residing in rural census blocks lack access to fixed broadband providing 10 Mbps/768 kbps speeds."[3] As a result, the Commission tentatively adopts 10 Mbps as the new standard downstream broadband speed.

Now that the Commission has proposed a new downstream broadband speed standard, the issue becomes what the speed should be. While the Commission contrasts urban area availability at 10 Mbps with rural availability, a review of the SBI data reveals the actual gap between urban and rural downstream speed availability begins to widen substantially at the 25 Mbps level.[4] Further analysis of the SBI's broadband availability data reveals that just over 50% of customers in rural areas have access to broadband speeds of 25 Mbps or greater, compared to over 90% in urban areas. In certain states, the rural/urban broadband speed divide is even more striking:

[2] *FNPRM* at 140
[3] *Id*.
[4] National Broadband Map, "Broadband Statistics Report", accessed at www.broadbandmap.gov

	Download Speeds		
State	**>25 mbps**	**>50 mbps**	**>100 mbps**
AZ - Rural	28.7%	22.1%	12.2%
AZ - Urban	93.4%	88.4%	84.0%
CO - Rural	29.3%	20.9%	16.7%
CO - Urban	90.4%	88.7%	86.2%
KS - Rural	32.3%	27.6%	18.5%
KS - Urban	93.6%	91.8%	82.9%
NM - Rural	24.7%	21.3%	16.0%
NM - Urban	87.7%	85.4%	67.5%

Based on this data, Alexicon recommends the Commission consider higher standard broadband speed availability for RoR areas. This would provide two immediate benefits for all stakeholders: (1) provide RoR carriers with a more "future proof" target at which to aim, in turn allowing these carriers to plan network investments more effectively[5], and (2) avoid the clearly necessary exercise of revisiting the standard broadband speed in the near future, especially if the Commission adopts a 10 Mbps standard now. The trend in urban areas is clear, with over 70% of customers nationwide having access to broadband download speeds in excess of 100 Mbps.

Along with any increase in the standard broadband speeds applicable in RoR areas would be a likely increase in the need for universal service support. To begin, the last group of customers without access to today's 4 Mbps speeds would need to be covered. These customers represent the most costly group of customers to serve, and would require the greatest planning timeline, even under the auspices of the Commission's requirements for RoR broadband build-out.[6] Next, all new construction would have to be able to provide broadband speeds at the new standard, which may necessitate upgrades or replacements of current plant. Finally, as customer demand for higher speeds increases, RoR carriers would have to ensure these needs are met. Even assuming scalable networks already exist in a majority of RLEC areas that are capable of delivering, for example, 25 Mbps downstream, there would still be costs necessary to

[5] This will also allow RoR carriers to provide the Commission with more accurate 5 year network improvement plans, per 47 CFR § 54.313(a)(1)
[6] *See e.g., FNPRM* at 144

make such broadband service available to all customers. This all leads to additional need from the federal support mechanisms. The Commission must, as Alexicon firmly believes, move forward with revising the standard broadband speeds in RoR areas, which will necessitate an analysis of such an increase on overall RoR carrier CAF needs. To increase the broadband speed standards without consideration of additional support needs of RoR carriers would merely be adding another unfunded mandate on rural LECs, to the detriment of their customers and the economies they serve.

II. NEAR-TERM REFORMS FOR RATE-OF-RETURN CARRIERS

The Commission proposes "to adopt a rule that no new investment after a date certain (i.e., December 31, 2014) may be recovered through HCLS and ICLS when such investment occurs in areas that are already served by a qualifying competitor."[7] This proposal would supplement the Commission's rule to eliminate support in areas 100% served by a qualifying competitor[8], and indeed goes much further in fine tuning, to the census block level, where support may or may not be available.[9] The Commission additionally proposes that RoR carriers be able to produce records, on demand, that demonstrate new investment included for recovery via HCLS or ICLS is not located in areas subject to competition.[10] An alternative, safe harbor, is proposed that would allow investment to be included in HCLS and ICLS recovery if, after such investment plans are posted online, no objections are raised.[11]

The overall issue that seems to have been ignored in discussing the adjustment of support in areas served by RoR carriers is that of the necessity of a carrier of last resort (COLR). To Alexicon's knowledge, the Commission has yet to definitively rule that COLR policies are no longer relevant, which would be necessary in order to limit support in areas served by RoR carriers as contemplated in the *FNPRM*. COLR policies ensure service, both voice and broadband, is made available to all who request such service, regardless of where the customer lives or how much it costs to serve the customer. This is

[7] *FNPRM* at 263
[8] *See e.g.*, *FNPRM* at 54-56
[9] *Id.*, at 264
[10] *Id.*, at 265
[11] *Id*

one of the vital lynchpins of universal service policy in this country - universal service requires and necessitates a provider. Competitive providers are considered competitive because they are not required to provide service everywhere. Unsubsidized competitors are not eligible telecommunications carriers (ETC) by the very definition of that term.[12] Thus, unsubsidized competitors are under no obligation to serve all who request service. By adopting its proposal to eliminate recovery for investments made in specific census blocks where an unsubsidized competitor exists begs the whole question of COLR policies in the first place - the Commission first needs to definitively find that COLR policies are no longer applicable in areas served by RoR carriers. This finding, to date, has not been made.[13]

Besides the COLR policy implications discussed above, the Commission's proposal to eliminate recovery of new investment in census blocks served by unsubsidized competition also raises questions of technical feasibility. While this issue has been discussed at length previously, some points bear repeating:

- "…the risks of loss of service to the most vulnerable rural customers are too great. RLECs construct and operate integrated networks to serve rural communities (the 'donut holes') and the more sparsely populated areas surrounding them (the 'donuts').[14]
- "Should a competitor engage in creamskimming by serving the core community, it not only will threaten future investment and service quality in the core community by splitting a market that was previously too small to justify multiple carriers, but also will reduce the RLEC's ability an incentives to service the less 'profitable' donut area."[15]
- "If the Commission proceeds to eliminate the RLEC 's high-cost support for the core community, it will disrupt, if not destroy, the RLEC's network-based business plan, and encourage it to cut back on investment and service to the most expensive and difficult-to-serve consumers in the donut area."[16]
- "Changing one piece of the funding puzzle can have far more devastating impacts on a company serving a single support study area than on a company serving multiple study areas, some of which require little or no support."[17]

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[12] ETCs are obligated, among other things, to provide supported service throughout their designated area. 47 USC § 214(e)(1)(A)

[13] See also Rural Associations' Petition for Reconsideration, filed in WC Docket No. 10-90, et. al., on 12/29/2011, at p. 19 "The Associations accordingly request the Commission reconsider the Order insofar as it would require any phase-out of support in RLEC areas with 100 percent overlap, <u>at least until such time that questions related to RLECs' ongoing obligations as COLRs and ILECs are resolved</u>." (emphasis added)

[14] Rural Association Comments, WC Docket No. 10-90 et. al., (filed January 18, 2012) at 85

[15] *Id*.

[16] *Id*.

[17] *Id*.

The above points are as true and relevant today as they were when first raised, but the Commission has yet to address these points in any substantive fashion. However, the Commission must address the effect on COLR policies that its latest attempt at eliminating support in areas where RoR carriers may face unsubsidized competition may have before moving forward. Alexicon suggests that COLR policies, which have proven to be absolutely vital to attainment of universal service goals in the United States, will be doubly important in meeting national universal broadband goals. Furthermore, COLR policies and the Commission's pursuit of constraining support in RoR areas with some level of unsubsidized competition will not and cannot coincide peacefully.

III. LONGER-TERM REFORMS FOR RATE-OF-RETURN CARRIERS

The Commission proposes a number of longer-term reforms for RoR carriers, including a proposal for a stand-alone broadband funding mechanism[18] and the voluntary transition of RoR carriers to incentive regulation.[19] Both of these proposals involved the use of forward-looking cost principles, and/or adoption of the Connect America Cost Model (CACM) for RoR carriers. It is to the advisability of using forward-looking cost models for rural, RoR carriers that Alexicon will turn next.

A. The Use of a Cost Model for Support in RoR Carrier Areas is Premature

The issues surrounding the use of forward-looking cost models to determine support levels in areas served by rural carriers have been debated for fifteen years.[20] While the generally larger price cap carriers have had federal support determined by forward-looking cost models for over 10 years, the Commission has yet to take a similar step for RoR carrier support.[21] The reasons for this are numerous and are in general due to the unproven ability of such cost models to adequately account for the realities of serving high cost rural areas and generate sufficient and predictable support. At the very least, the

[18] *FNPRM* at 269
[19] *Id*., at 276-299
[20] *See e.g*., the work of the Rural Task Force (RTF), available at http://www.wutc.wa.gov/rtf/old/RTFPub_Backup20051020.nsf/?OpenDatabase
[21] Except for RoR affiliates of price cap carriers - see *Transformation Order* (FCC11-161) at 128

Commission must address all of the issues raised in regards to the use of cost models for RoR carrier areas before moving forward with either the stand-alone broadband mechanism or with the elective long-term solution. Furthermore, Alexicon firmly believes this additional vetting of the CACM or similar model must take place in a detailed and orderly fashion, such as was done with the RTF.

Overall, forward-looking cost models fail to produce reasonable results in areas served by RoR carriers for several reasons, with the most vital being the inherent inability of the models to accurately account for the substantial differences in the areas served by such carriers. As stated by the RTF, "…the analysis conducted by the Task Force documents a substantial diversity among Rural Carriers themselves. An understanding of the differences between Rural Carriers and non-Rural Carriers and the diversity among Rural Carriers is key to designing appropriate mechanisms and policies which will allow the fulfillment of the 1996 Act's universal service principles."[22] The Commission has yet to undertake an analysis of these differences, and must do so prior to embarking on any path to determining RoR carrier support based on the CACM or other model.

B. There Needs to be a Sufficient and Predictable Federal Support Mechanism in Place for Those Carriers That Do Not Elect the Commission's Proposal

The Commission's proposal to implement a voluntary mechanism for RoR carriers that is based on the CACM means, presumably, a certain percentage of companies will not elect the Commission's plan. As a result, the Commission must have a mechanism that is applicable to the non-electing carriers. While Alexicon opposes adoption of any RoR carrier mechanism based on a cost model such as the CACM at this time, the Commission should consider the benefits offered by the Small Company Coalition's (SCC) Universal Broadband Service proposal.[23] The SCC proposal can be used as an overall replacement of the current federal mechanisms, with a focus placed on broadband services, or can be used and coexist with the Commission's voluntary plan as discussed in the *FNPRM*.

[22] RTF Recommendation to the Federal-State Joint Board on Universal Service, September 29, 2000, pp. 10-11
[23] See Small Company Coalition July 29, 2014 Ex Parte Communication, filed in WC Docket No. 10-90 (*SCC Ex Parte*)

C. The Commission Should Consider the Specific Needs of Tribal Areas and Tribally-Owned Carriers Before Adopting Any Long Term Reforms

Tribal areas and Tribally-owned carriers present a unique set of circumstances that the Commission needs to address prior to embarking on any long term reforms to the RoR carrier universal service support mechanisms. The Commission itself recognized the critical role Tribally-owned carriers play in serving Tribal areas:

> "Tribal governments, and by extension, Tribally-owned and operated carriers, play a vital role in serving the needs and interests of their local communities, often in remote, low-income, and underserved regions of the country. Tribally-owned and operated carriers serve cyclically impoverished communities with a historical lack of critical infrastructure. Reservation-based economies lack fundamental similarities to non-reservation economies and are among the most impoverished economies in the country. Tribal Nations also cannot collateralize trust land assets, and as a result, have more limited abilities to access credit and capital."[24]

Many, if not all, Tribally-owned RoR carriers started by acquiring lines in areas historically underserved by the incumbent carrier. These newly-formed carriers based their business plans in part on the long term existence of a sufficient and predictable universal service system. Commission actions since the adoption of the *Transformation Order* have eroded Tribally-owned carrier confidence in the national commitment to universal service in Tribal areas.[25] The Commission should act now, in the context of long term RoR carrier universal service funding reform, to ensure the Tribal areas served by Tribally-owned carriers are not left on the wrong side of a widening digital divide. The only plan on record that seems to take the unique needs of Tribal areas into account is the SCC proposal:

> "Furthermore, the SCC believes Tribal incumbent local exchange carriers will benefit from its proposal via the SCC's recommendation by not only increasing the maximum '$250/line/month' rule in the same proportion as the additional allowance included in the FCC's previous quantile regression analysis (QRA) for the Tribal coefficient, but also to increase the Lifeline eligibility criteria from 135% to 150% as it relates to Federal Poverty Guidelines."[26]

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[24] *In the Matter of Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, *et. al*., FCC 11-161(rel. November 18, 2011) at 1047 (*Transformation Order*)
[25] *See e.g.*, Comments of the National Tribal Telecommunications Association, WC Docket No. 10-90, filed July 25, 2013, at 5
[26] *SCC Ex Parte* at 1

The Commission should consider the SCC proposal, or something substantially similar to it, in order to provide Tribally-owned carriers, and the Native American customers they serve, a level of confidence that their needs are being addressed.

IV. CONCLUSION

Alexicon appreciates the Commission's efforts at addressing the long-term needs of RoR carriers and the support mechanism on which they depend to meet universal service policies. However, prior to adoption of many of proposals contained in the FNPRM, the Commission needs to take a step back and consider the overall goal of universal voice and broadband service and how best to reach those goals in the high cost rural areas served by RoR carriers. In particular, the Commission must address the COLR policy and how it conflicts with any proposal to reduce RoR carrier support in areas partially overlapped by unsubsidized competition. Furthermore, the Commission should revisit the problems with applying forward-looking cost models to the determination of support for RoR carriers and address the myriad issues raised by advocates of rural, RoR carriers. Finally, the Commission should consider further analysis of the proper standard broadband speeds to adopt for RoR carrier areas given the data available and how that data is trending.

Respectfully Submitted,

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