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

In the Matter of	)	
Connect America Fund	)	WC Docket No. 10-90
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 a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

Comments of
The Small Company Coalition

I. INTRODUCTION AND SUMMARY

The Small Company Coalition (SCC) files these comments in response to the Notice of Proposed Rulemaking issued in the above-captioned proceedings.[1]

The SCC is an alliance of rural telecommunications and broadband providers as well as supporting vendor companies formed to educate and empower small rural ILEC communications providers and strives to ensure that the voice of small companies is heard by those who have a genuine interest in protecting and enhancing the communication service needs of rural Americans.

The SCC will focus its comments on questions and proposals surrounding the high-cost support budget for rate-of-return carriers, the sufficiency of the high-cost support funds in light of the proposals made in the NPRM, and some of the other issues raised. The SCC will argue that the

[1] *In the Matter of Connect America Fund, et. al,* Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, WC Docket Nos. 10-90, et. al. (FCC 18-29, rel. March 23, 2018) (*NPRM*)

budget for rate-of-return carriers has never been adequately determined in light of the current broadband obligations placed on these providers and those that will be placed on them in the future. In addition, any other proposals that take focus away from the matter of a sufficient and reasonable budget should either be ignored or delayed until the overall budget problem has been solved.

II. CONNECT AMERICA FUND SUPPORT AVAILABLE FOR RATE-OF-RETURN CARRIERS

A. The Commission Must Determine a True Universal Service Broadband Budget

The current budget for the rate-of-return (RoR) carrier high-cost support mechanisms, which include high-cost loop support (HCLS, including Safety Net Additive and Safety Valve support), Connect America Fund Broadband Loop Support (CAF BLS), Connect America Fund Intercarrier Compensation (CAF ICC), Alternative Connect America Model (ACAM) support, and support resulting from the Alaska Plan, is $2 billion. As noted in the *NPRM*, this amount was derived from the approximate level of support paid out in 2011.[2] The Commission seeks comment on revising the budget for RoR carriers.

The SCC notes that, by virtue of the Commission's adoption of a budget control mechanism (BCM) and the fact that the BCM has been necessary for the past two and half years, the overall RoR high-cost budget is *ipso facto* inadequate. Furthermore, given that only HCLS and CAF BLS are affected by the BCM, as the other programs are "fixed and not already predetermined for the support term"[3], the mechanisms used by a majority of the RoR carriers are in a constant state of unpredictable decline. All of this is taking place while the RoR carriers are tasked with doing more

[2] *NPRM* at 103
[3] *NPRM* at 105

in terms of the deployment, operations, and maintenance of broadband capable networks that can deliver higher and higher speeds. It is the policy in this country to establish and maintain universal voice and, even more importantly, broadband service. Unfortunately, the Commission's policy decisions affecting RoR carrier high-cost mechanisms are making it more and more difficult to live up to this goal.

In order to determine the appropriate level of support, the Commission should verify the costs, from both a deployment and maintenance/operations standpoint, necessary to have universal broadband service, at a given set of performance characteristics or for a given network type. This should be done for all RoR carrier-served areas in the United States, and should be in lieu of any further attempts to paper over a lack of real information on exactly what it will cost to implement and maintain broadband universal service. One option would be to initiate a detailed engineering study to determine the actual cost, using today's technology and common network topologies, of deploying, operating, and maintaining a wireline broadband network capable of providing, for example, 25/3 Mbps ubiquitously.

Should the Commission choose to ignore the SCC's advice and decline to generate a bottom-up budget for RoR carrier high-cost support, the following discusses some of the more serious problems with the Commission's current budget.

B. The Current Budget is Substantially Underfunded

By its own standards, the current high-cost support program budget for areas served by RoR carriers is sorely underfunded. This is mainly due to various Commission actions over time to constrain or otherwise limit support. While some of these actions took place prior to the 2011 decision to adopt a $2 billion budget, the methods adopted since then to constrain support are the focus of the NPRM. The SCC suggests the Commission closely examine all constraints on support, which can be defined as any policy that provides support in amounts less than what the Commission's high-cost support algorithm allows.

For the HCLS and CAF BLS programs, the Commission constrains the overall support via two mechanisms – (1) the indexed cap, and (2) the budget control mechanism. The indexed cap ensures the overall HCLS program changes by an established amount year-over-year, based on a calculation included in the Commission's rules (commonly known as the Rural Growth Factor).[4] According to the National Exchange Carrier Association's (NECA) latest filing, "[t]he RGF is calculated as the sum of the annual change in the total number of legacy ROR carrier working loops and the percentage change in the Gross Domestic Product-Chained Price Index (GDP-CPI)."[5] The BCM was adopted in 2016 in order to enforce the RoR carrier high-cost support budget, and provides for a pro-rata and per-line reduction for all support recipients when the budget is exceeded.[6] The effects of these two high-cost support constraint mechanisms are as follows:

($s in 1000s)

Mechanism	Uncapped	Capped	Difference
Rural Growth Factor	$ 722,987	$ 586,714	$ (136,273)
BCM - HCLS	$ 580,955	$ 490,784	$ (90,171)
BCM - CAF BLS	$ 883,316	$ 746,216	$ (137,100)
Totals	$ 2,187,258	$ 1,823,714	$ (363,544) [7]

According to this table, the HCLS and CAF BLS programs are currently underfunded by over $350 million as compared to rules and formulae adopted. While the SCC recognizes and applauds the Commission's decision to infuse the HCLS and CAF BLS programs to mitigate the BCM reductions for the 2017/2018 funding year, no permanent solution was adopted and thus the BCM

[4] See 47 C.F.R. § 54.1303
[5] NECA: *Overview and Analysis of 2017 USF Data Submission* at 3
[6] See e.g., NPRM at 73
[7] NECA: *Overview and Analysis of 2017 USF Data Submission* at Appendix G; USAC 2018-2019 Budget Analysis

will continue to constrain support.[8] The above table also does not take into account the Commission's other constraint mechanisms, namely the corporate operations expense cap, the operating expense limitation, and the capital investment allowance. Finally, and as discussed further below, the Rural Growth Factor (RGF) effect is cumulative, while the above reduction reflects only the current year amount.

One of the proposals the Commission considers to alleviate the RoR carrier budget insufficiency is the addition of an inflationary factor. According to the Commission's calculations, applying an inflationary factor to the HCLS and CAF BLS since 2011 would have increased the current budget by $120 million. While the SCC encourages any steps to mitigate the serious problems caused by the chronic underfunding of the RoR carrier high-cost support programs, simply adding an inflationary factor to an already inadequate budget amount is clearly insufficient. Instead, the inflationary factor should be applied to a newly-determined, bottom-up, budget.

C. The Commission Must Address the So-Called Rural Growth Factor

A persistent and substantial problem not addressed in the *NPRM* is the funding insufficiencies caused by the RGF and, if not mitigated, the harm it will cause in the future. The RGF was initially adopted in 2001 in the so-called Rural Task Force (RTF) order, and represented an extension and revision to the indexed cap placed on the USF in 1993. The RTF order addressed a number of RLEC universal service support program issues, including how to better address what at that time was the uncontrolled growth in USF levels.[9] The RGF consists of two components: (1) a measure of inflation (GDP-CPI) and (2) a line growth factor. In addition, the Commission re-

[8] *NPRM* at 77
[9] *In the Matter of Federal-State Board on Universal Service*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45 (FCC 01-157), rel. May 23, 2001 (*RTF Order*)

based the fund by determining the total amount of support absent the indexed cap and corporate operations expense adjustment.[10] The line "growth" factor measures the year-over-year change in USF working loops, and has been negative for a number of years. Once the line growth factor is combined with the GDP-CPI, the RGF is consistently negative. Finally, the RGF is applied to the previous year's total HCLS payments to arrive at a capped amount of HCLS available to all carriers.

The latest available data on the RGF shows a factor of -1.1675% (The RGF is comprised of a decrease in loops of 2.4465% and a GDP-CPI change of 1.2790%)[11], which results in a total HCLS fund that is approximately $136 million less that the total calculated at the frozen NACPL.[12] Due to the capping mechanism, a pro-rata adjustment to all recipient support of .811514 will be applied. To be clear, this is an almost 19% reduction in overall support from the previous year's capped level. This ongoing cumulative effect of the RGF is clearly taking its toll on the HCLS budget, seriously hampering its ability to remain predictable and sufficient, and thus crippling the recipients' ability to plan for the future.

The SCC strongly urges the Commission address the seemingly endless reduction of HCLS funding via the RGF – a mechanism that was adopted at a time when total rural USF working loops were growing at an annual rate of 4.26%.[13] As previously noted, total USF working loops for the most recently-available period *decreased* by 2.4465%. Clearly, the main reason for adopting the RGF in the first place no longer holds and the "growth" in the RGF needs to be completely readdressed. Thus, and while the SCC recognizes that any changes to the RGF must be

[10] *Id.*, at 40
[11] NECA: *Overview and Analysis of 2017 USF Data Submission* at 5
[12] *Id.*
[13] *RTF Order* at footnote 131

accompanied by serious changes to the overall budget, the Commission should consider one of the following actions.

First, the RGF can be eliminated. This would entail a rebasing of the total HCLS mechanism, similar to what was done via the RTF Order.[14] At that time, the Commission decided to "re-base the rural incumbent local exchange carrier portion of the high-cost loop fund as if the indexed cap and the corporate operations expense limitation were not in effect…"[15] In addition, the RTF recommended that the indexed cap be resized whenever the definition of support services is changed.[16] The SCC notes that broadband services were added to the definition of supported services in 2011, thus supporting a long-needed change to the indexed cap. This method could, for example, consider the amount of support calculated using the $240 frozen NACPL adopted by the RTF.[17] According to NECA's latest data, the total amount of HCLS funding under this scenario is approximately $1.458 billion, which represents an approximate $872 million increase over capped support.[18]

Another alternative is to remove the line "growth" portion of the RGF. As stated above, USF working loops have been decreasing for years, while costs have not declined at a similar rate. In fact, the now-irrelevant change in "working loops" does not even allow for cost fluctuations or policy changes, or take into consideration the fact that not all supportable costs are tied to rural USF working loops. In addition, the trends for total HCLS and nationwide HCLS unseparated revenue requirements likewise show a mismatch, as shown below:

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[14] *Id.*, at 42
[15] *Id.*
[16] *Id.*, at 47
[17] *Id.*, at 55
[18] NECA: *Overview and Analysis of 2017 USF Data Submission* at Appendix G

Description	2013	2014	2015	2016
Unseparated RRQ	-2.32%	-1.03%	-0.92%	-0.27%
HCLS	-5.80%	-6.06%	-4.61%	-4.79%

[19]

While this data clearly shows a divergence between the rates of decline in total HCLS USF unseparated revenue requirements and HCLS distributions, the SCC maintains that the RGF should be either eliminated or revised to reflect only the change in the GDP-CPI, which would allow the HCLS to fluctuate based on factors more relevant to changing costs and related demand for support. The problem is that the HCLS, due to the RGF's USF working group "growth" component, is artificially reduced each year based on a factor not related to the provision of universal service.

In addition, expenses in specific areas, such as backhaul carrier access, network security, and pole attachments have seen increases in certain areas. These costs all relate to the provision of universal service and are supportable via the HCLS, but are not being recognized due to the never-ending decrease in funding assured by the RGF.

The above discussion demonstrates a clear mismatch between funding and expense trends, and shows a never-ending reduction in the HCLS fund does not make sense. Removing the line "growth" factor would mean the RGF would cause the HCLS fund to fluctuate with inflation, an outcome consistent with other Commission proposals.

D. The High-Cost Support Budget for RoR Carrier Areas Must be Fully Funded

The high-cost support program for RoR carrier areas, specifically the HCLS and CAF BLS programs, are clearly underfunded. The only solution is to increase the budget, while at the same time addressing any inefficiencies in the programs that may exist. Substantial effort has been

[19] Source for HCLS trends - USAC annual reports; source for USF Unseparated Revenue Requirement - NECA: *Overview and Analysis of 2017 USF Data Submission*

expended and progress made on the inefficiency problem through policies (opex caps, capital investment allowance, corporate operations expense caps) and audit and enforcement. The lengthy discourse in the March 2018 order in regard to eligible and ineligible expenses is evidence that the Commission is serious about addressing inefficiencies.[20] However, no such effort or progress has been made on how to provide more support to the underfunded HCLS and CAF BLS programs.

In the Commission's decision to provide additional funding for the ACAM program, USAC is directed to "make a one-time lump sum payment from excess cash in its high-cost account."[21] The SCC notes that the provision leading to the "excess cash" in the high-cost account expired at the end of 2017.[22] As a result of this, the Commission decided to renew the process for "smoothing" quarterly contributions by directing USAC to collect $1.125 billion per quarter for the high-cost program even if projected demand is less.[23] To the SCC's knowledge, the last public reporting of the high-cost account balance was in relation to the third quarter 2017 USAC fund projections, at which time the balance was in excess of $1.8 billion.[24] With the renewal of the quarterly contribution "smoothing" policy, the SCC recommends a full accounting of the high-cost account and whether any excess can be used to either increase the HCLS and CAF BLS budgets or further mitigate the BCM reductions. If there are additional reserves in other Commission-controlled programs, the SCC urges the Commission to identify these excesses, the need for such excesses, and allocate any unencumbered excess to the HCLS and CAF BLS programs.[25]

[20] *NPRM* at 10-61
[21] *NPRM* at 68
[22] *Id.,* at 69
[23] *Id.*
[24] USAC 3Q2017 Fund Size Projection Summary at 11-12
[25] *See e.g.,* Small Company Coalition June 15, 2017 Ex Parte Filing, WC Docket No. 10-90. In that filing, the SCC noted the E-Rate program had over $6 billion in "investments" at the end of 2016. Unfortunately, USAC's 2017 Annual Report does not contain a similar accounting of these amounts.

The SCC is confident that once a reasonable, bottom-up, determination of the total support need for RoR carrier areas across the country is performed, the budget for HCLS and CAF BLS will have to increase dramatically. In the event this occurs, the Commission will have to take a close look at universal service contribution reforms, with a focus on ensuring all those who benefit from universal access to broadband services are required to contribute to the federal mechanisms that make this possible.

III. OTHER PROPOSED REFORMS

The Commission proposes a number of other reforms in the NPRM, including revising the monthly per-line limit on universal service support, taking another look at the one hundred percent overlap process, a proposal to overhaul the CAF BLS process, means testing of high-cost support, and combining the HCLS and CAF BLS programs. The SCC will comment on some of these proposals below.

A. Revising the Monthly Per Line Support Limit

Currently, a monthly per-line limit is placed upon total high-cost support, excluding CAF ICC, ACAM, and Alaska Plan support.[26] According to the *NPRM*, since only 13 study areas are affected by this limit, and only 10 companies have requested relief, the Commission believes the limit is not restrictive enough.[27] As a result, the Commission requests comment on reducing the limit to a lower amount, such as $200.[28] The SCC notes that no other rationale is provided for

[26] 47 C.F.R. §54.302
[27] *NPRM* at 159
[28] *Id*.

reducing the monthly per-line limit, and until reasonable evidence is provided that such a change is necessary for upholding universal service policy, the SCC opposes such a change.

B. Revising HCLS and ICLS and Eliminating CAF BLS

The Commission requests comment on whether it can "rely on its prior HCLS and ICLS mechanisms but treat all lines similarly, regardless of what services customers purchase. Under this scenario, carriers would include certain costs associated with standalone broadband service when calculating HCLS and ICLS and all voice and standalone broadband lines would be counted as working loops when calculating support. Thus, HCLS and ICLS would continue as they had prior to the adoption of the *Rate-of-Return Reform Order* but would now include standalone broadband costs and lines in the calculations."[29] The Commission asks if this proposal "would be less complex than the CAF BLS program adopted by the Commission in 2016."[30]

The SCC proposed a similar method in 2014, one that was based on utilizing current high-cost support mechanisms to better fund broadband deployment.[31] While the SCC believes that its proposal, the proposal described in the NPRM, or a similar method would efficiently and sufficiently provide support for the deployment, maintenance, and operation of wireline broadband networks, to adopt such a proposal and completely eliminate the CAF BLS program would be a substantial and unnecessary disruption. Moreover, the root cause of any failure of high-cost support for areas served by RoR carriers to meet national goals is not necessarily the mechanism itself, but rather the failure to sufficiently fund the programs.

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[29] *NPRM* at 164
[30] *Id*.
[31] See Comments of the Small Company Coalition, filed August 8, 2014 in WC Docket Nos. 10-90, et al.

C. Means Testing High-Cost Support

The Commission seeks comment on whether support should be targeted to low income areas, and should support provided within the high-cost programs be means tested. The SCC assumes that "means testing" can be defined as somehow only targeting high-cost support to customers who demonstrate a lack of means to pay the market rate for the supported service.

The SCC opposes such a policy shift. First, high-cost support exists to assist in the deployment, operations, and maintenance of the networks and services necessary to ensure universal service. Section 254(e) of the Telecommunications Act of 1996 is clear on this point in that support can only be used "for the provision, maintenance, and upgrading of facilities and services for which the support is intended." Second, means testing can and should be used in programs designed to address problems with universal service *adoption* and *affordability*. In this respect, the federal and various state-level Lifeline programs are designed to ensure the services made possible by high-cost program-supported networks are as affordable as possible. The Commission should not conflate the two policy areas and not attempt to means test high-cost support.

CONCLUSION

The SCC appreciates the Commission's efforts to address the insufficiency of the RoR carrier high-cost support programs, specifically the HCLS and CAF BLS. Instead of addressing the inadequacies of the current program funding, and attempting to paper over these problems, the SCC urges the Commission to undertake a review of the actual need for high-cost support in RoR carrier areas based on, for example, costs related to the deployment, operation, and maintenance of a FTTP network. Once this vital data is known, only then can the Commission and RoR carrier industry stakeholders effectively move forward with a budget that assures all Americans living in rural areas have access, and retain access, to broadband services.

If the Commission decides not to perform the overall review recommended above, then it should take steps to increase funding for HCLS and CAF BLS. This includes a recognition of the underfunding amounts, the causes of underfunding, and what can be done to alleviate the issue. The SCC urges the Commission to address the adverse effects of the RGF, and to immediately undertake a review of the high-cost reserve and other surpluses that may be under USAC's control.

Respectfully Submitted,

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