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**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
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Inter-carrier Compensation Regime)	CC Docket No. 01-92
)	

**COMMENTS OF THE BLOOSTON RURAL CARRIERS AND
THE SMALL COMPANY COALITION**

The Blooston Rural Carriers¹ and the Small Company Coalition (“SCC”), by their attorneys, hereby submit the following comments on the Petition for Reconsideration of Silver Star Telephone Company, Inc. in the above-captioned proceeding. Specifically, the Blooston Rural Carriers and the SCC support Silver Star’s petition, and agree that the Commission’s *Report and Order*² failed to adequately address record evidence of the harm to carriers and the public caused by the Rural Growth Factor (“RGF”), and failed to adequately explain its reasoning in refusing to modify the RGF. These are the hallmarks of “arbitrary and capricious” rulemaking prohibited by the Administrative Procedures Act (“APA”), and warrant

¹ Participating carriers are Custer Telephone Cooperative, Inc., Peñasco Valley Telephone Cooperative, Inc., Rural Telephone Service Co., Inc. d/b/a Nex-Tech; and VTX1 Companies.

² *In re: Connect America Fund, et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC No. 18-176, WC Docket No 10-90, 14-58, 07-135; CC Docket No. 01-92, released December 13, 2018 (*Report and Order*).

reconsideration. On reconsideration, the Commission should eliminate or, at a minimum, revise the RGF to remove its negative impact on funding. These points are discussed below.

The APA requires an agency to examine the record and provide an explanation as to how it reached its conclusions based thereon. “An agency action is arbitrary and capricious under the APA if, inter alia, the agency fails to ‘examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.’”³ An agency's “failure to respond meaningfully to the evidence renders its decisions arbitrary and capricious.”⁴

In the *Report and Order*, the Commission concluded that “[c]ommenters fail to address that HCLS support should be declining as customers switch to broadband-only services, which are supported through CAF BLS.”⁵ In drawing this conclusion, however, the Commission did not consider several arguments in the record demonstrating that High-Cost Loop Support (“HCLS”) should not decline. The Concerned Rural LECs, WTA, and GNVW all point out that while the RGF appropriately addresses growth because costs increase with additional lines when building a network, the corollary is not true: costs do not decrease with the loss of lines.⁶ As WTA correctly describes: “RLECs ... build networks that serve geographic areas ... to serve actual and potential customer locations *whether or not such customers take service or terminate service from time to*

³ *Sorenson Commc'ns, Inc. v. FCC*, 567 F.3d 1215, 1220-1221 (10th Cir. 2009) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)); 5 U.S.C. § 706.

⁴ *Mistick PBT v. Chao*, 440 F.3d 503, 512 (D.C. Cir. 2006) (quoting *Tesoro Alaska Petro. Co. v. FERC*, 234 F.3d 1286, 1294 (D.C. Cir. 2000)).

⁵ *Report and Order* at ¶170.

⁶ Comments of the Concerned Rural LECs, WC Docket No. 10-90, et al., filed May 25, 2018 at pp. 2-3 (“Concerned Rural LECs”); Comments of WTA – Advocates for Rural Broadband, WC Docket No. 10-90, et al., filed May 25, 2018 at pp. 10-11 (“WTA”); Reply Comments of GNVW Consulting, Inc., WC Docket No. 10-90, et al., filed June 25, 2018 at pp. 19-20 (“GNVW”).

time.”⁷ Accordingly, the Commission’s conclusion that HCLS should decrease as customers switch to broadband-only services does not necessarily follow and the Commission must clearly explain its thinking.

The Commission also failed to adequately consider alternatives in the record. NTCA, the Concerned Rural LECs, SCC, GRTI, and GNVW all offer alternatives to fully eliminating the RGF⁸ that the Commission swept aside, stating that “[i]ncreasing HCLS support provides a disincentive for legacy carriers to deploy broadband capable networks.”⁹ As a threshold matter, this conclusion does not appear to be supported; the paragraphs of the *Transformation Order* cited here discuss the performance goals adopted by the Commission to improve accountability, and do not appear to relate to incentives or disincentives to deploy broadband networks. Even assuming the Commission’s assertion is correct, however, the proposals in the record would not increase HCLS. As both the Commission and these commenters recognize, rural line growth has been negative for years, and this trend is expected to continue. Accordingly, eliminating the line growth portion of the RGF, as proposed by GNVW and the SCC, would not result in an increase in HCLS; it would only stop the ongoing decline. Similarly, WTA’s proposal to eliminate the RFG but also freeze HCLS going forward would not result in an increase in HCLS.

⁷ WTA at p. 10. Emphasis supplied.

⁸ Concerned Rural LECs at pp. 2-3; Comments of NTCA – The Rural Broadband Association, WC Docket No. 10-90, et. al., filed May 25, 2018 at p. 69 (“NTCA”); Comments of Gila River Telecommunications, Inc., WC Docket No. 10-90, et. al., filed May 25, 2018, at pp. 2-3 (“GRTI”); Comments of the Small Company Coalition, WC Docket No. 10-90, et. al., filed May 25, 2018 at p. 7 (“SCC”).

⁹ *Report and Order* at ¶171.

Finally, the Commission failed to address evidence of the severe impact the RGF has on HCLS. Regardless of whether a negative RGF is “a feature not a bug,” several commenters provided evidence of the massive reductions the RGF accounts for today and the harms associated with those reductions. The SCC indicates that the RGF caused overall support to decrease 19% since last year,¹⁰ and GTRI notes that in its case support decreased by 36%.¹¹ The Concerned Rural LECs calculate that HCLS has declined 45% since its peak in 2003 – the last time it ever increased.¹² Yet the Commission, in determining that no changes to the RGF are necessary, provided no explanation as to why such dramatic cuts continue to be appropriate, even if they were intended when the RGF was adopted (which several commenters in the record dispute). Indeed, it is unclear from the *Report and Order* that the Commission even considered these specific numbers, which are part of the record, at all.

These points, which were not appropriately considered or addressed by the Commission in the *Report and Order*, make clear that change is long overdue. As the Blooston Rural Carriers argued in their initial comments on this matter, “[c]ircumstances have now changed in a way that makes continued application of the RGF counterproductive.” In light of the forgoing, the Blooston Rural Carriers and the SCC urge the Commission to grant Silver Star’s Petition and take the opportunity on reconsideration to eliminate the RGF or, at a minimum, diminish its negative impact on rural carriers.

¹⁰ SCC at p. 6.

¹¹ GTRI at fn. 8.

¹² Concerned Rural LECs at p. 3.

Respectfully submitted,

THE BLOOSTON RURAL CARRIERS
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