

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90
)
ETC Reports and Annual 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
)

**REPLY COMMENTS
OF
WTA – ADVOCATES FOR RURAL BROADBAND
SUPPORTING
PETITIONS FOR RECONSIDERATION
OF
PINELAND TELEPHONE COOPERATIVE, INC.
AND
SILVER STAR TELEPHONE COMPANY, INC.**

WTA – Advocates for Rural Broadband (“WTA”)¹ supports the Petitions for Reconsideration of the Commission’s December 13, 2018 *Report and Order*² in the captioned proceedings that were filed by Pineland Telephone Cooperative, Inc. (“Pineland”) and Silver Star Telephone Company, Inc. (“Silver Star”) on or about March 21, 2019.

WTA has previously applauded the many substantial steps taken in the *Report and Order* to provide the predictable and sufficient support necessary to promote and increase broadband

¹ WTA is a national trade association representing more than 340 rural telecommunications providers that offer voice, broadband and video-related services in rural America. WTA members are generally small RLECs that serve some of the most rugged, remote and/or sparsely populated areas of the United States.

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

investment and deployment in rural areas served by Rate of Return local exchange carriers (“RoR LECs”). The Commission has wisely recognized the critical importance of reliable, high speed, top quality, affordable and reasonably comparable broadband access that enables rural households and businesses to participate in and benefit from economic opportunity, job creation, education, and civic engagement. WTA did not file a petition for reconsideration of the *Report and Order*, but does find merit in matters raised by Pineland and Silver Star.

Pineland Petition for Reconsideration

Pineland, a Georgia RoR LEC, elected to accept the Commission’s initial offer of Alternative Connect America Cost Model (“ACAM”) support in November 2016 and recently elected to accept the revised ACAM offer adopted in the *Report and Order* (hereafter collectively referred to as “ACAM I”). Both the initial and revised ACAM I support offers “exclude[d] from support calculations those census blocks where an incumbent or any affiliated entity is providing 10/1 Mbps or better broadband using either FTTP [fiber-to-the-premises] or cable technologies.”³

In contrast, the *Report and Order* included a new offer of model-based support (ACAM II) that, *inter alia*, included support for “census blocks where the carrier or its affiliates have deployed fiber-to-the-premises or cable.” *Report and Order*, at par. 34. The Commission justified this determination by stating that “[i]ncluding census blocks which already have some fiber-to-the-premises will promote more and higher speed deployment to locations in those census blocks that do not currently have 25/3 Mbps or better service.” *Id.*, at par. 45. It added that “[m]oreover, the Commission has previously recognized that areas with partially or fully-deployed fiber-to-the-premises may still require high-cost support to maintain existing service.” *Id.*

³ Connect America Fund *et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 and 14-58 and CC Docket No. 01-92, FCC 16-33, released March 30, 2016, at par. 37.

WTA fully supported, and continues to support, the Commission's design of its *ACAM II* offer to include census blocks where FTTP or cable has already been deployed by the incumbent RoR LEC or its affiliate. However, it agrees with Pineland that it is inequitable for RoR LECs that elected the initial *ACAM I* offer to be unable to obtain support for census blocks where they or an affiliate was providing FTTP service in 2016 at a now relatively minimal 10/1 Mbps or greater level, while virtually all other RoR LECs now have the opportunity to elect an *ACAM II* offer that will provide support for census blocks where they or an affiliate have deployed FTTP at any level.

WTA agrees with Pineland that the most effective and efficient way for the Commission to treat all RoR LECs equitably is to reconsider its decision in paragraph 39 of the *Report and Order* not to extend its *ACAM II* offer to carriers that already receive ACAM support (i.e., *ACAM I* support). Instead, *ACAM I* participants should be permitted, as a matter of equity, to elect to take an *ACAM II* offer for their study areas. This option will give the early ACAM I adopters the opportunity to deploy more of the 25/3 Mbps service that has now become the standard broadband speed to locations in those currently excluded and unsupported FTTP census blocks that do not currently have 25/3 Mbps or better service. Moreover, even where *ACAM I* participants currently provide 25/3 service to some locations in the excluded census blocks, the Commission has recognized that areas with partially or fully-deployed FTTP still require high-cost support to maintain existing service.

In *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965), the court required the agency to treat similarly situated entities in a like manner, and to explain the relevance of any differences that result in different treatment. WTA reiterates that its support for the Pineland petition rests solely and entirely upon the need for all RoR LECs, including those previously electing *ACAM I*

support, to have an equal and equitable opportunity to elect the subsequent ACAM II offer which appears to be more favorable to the deployment of the now-standard 25/3 Mbps service.⁴

Silver Star Petition for Reconsideration

Silver Star, a Wyoming RoR LEC, seeks reconsideration of the Commission's decisions in the *Report and Order* to make no changes in the Rural Growth Factor ("RGF") or the application of the High Cost Loop Support ("HCLS") cap.

There is no dispute that RoR LEC networks have experienced reductions in their numbers of lines in service since the RGF was adopted as part of the Rural Task Force Recommendations in 2001⁵ (albeit at decreasing rates during recent years as the terminations of service on second "dial-up lines" and multiple "teen lines" have largely run their course). However, the critical facts remain that RoR LECs are carriers of last resort ("CoLRs") that build networks to serve geographic areas, and that they must build and maintain trunks, routes and drops to serve actual and potential customer locations whether such customers take service or whether they terminate service from time to time for a variety of reasons. The Commission's own cost-based support build-out obligations recognize this fact, and consider a "location" to be "served" as long as the carrier has built its network close enough that it can complete the remaining construction and installation to provide service to a customer at the location within ten business days. Given that HCLS recipients have built the requisite CoLR networks and incur the same costs to operate and maintain such

⁴ WTA does not take any position regarding the various proposals advanced by Pineland with respect to the mechanics and costs of the transition process that would need to be developed for *ACAM I* carriers that elected to move to *ACAM II* support.

⁵ *Federal-State Joint Board on Universal Service et al.*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, FCC 01-157, released May 23, 2001.

networks even as the numbers of their current customers fluctuate, the Commission should stop penalizing HCLS recipients for immaterial line count decreases.⁶

Therefore, WTA proposed in its May 25, 2018 comments in the present dockets that the “rural growth factor” be eliminated, and that the cap on HCLS be frozen at its existing 2018 level for the remainder of the period from 2018 to 2026. WTA recognized that HCLS disbursements to individual cost-based RoR LECs will change as they move through their investment cycles and that actual total HCLS support may well decrease as specific customers of RoR LECs migrate to broadband-only services and CAF-BLS support. However, it proposed the elimination of the RGF to stop the HCLS cap from continuing to decrease for reasons unrelated to appropriate network investment and operations and from causing unnecessary reductions of HCLS for *bona fide* network investments and operations.

WTA agrees with Silver Star that HCLS definitely does NOT constitute a disincentive for cost-based RoR LECs to deploy broadband capable networks. Rather, HCLS supports – and has long supported and encouraged the deployment of – multiple-use voice and broadband networks. In fact, until the broadband-only portion of the Connect America Fund – Broadband Loop Support (“CAF-BLS”) mechanism was adopted in 2016, HCLS and ICLS were the sole mechanisms that encouraged and enabled RoR LECs to construct and deploy broadband facilities in their rural service areas during the 1996-2016 period while broadband was increasingly becoming THE universal service.

Similarly, there is no reason why HCLS support must be declining as customers switch to broadband-only services. Certainly, as specific Customer A drops her voice service and moves to

⁶ Obviously, if a HCLS recipient loses all or virtually all of its customer lines, it should not receive support. To date, this has not been the case with respect to HCLS or its rural growth factor. Likewise, when a customer moves from a voice or voice/broadband service to a broadband-only service, high-cost support for that customer’s line will move from HCLS to CAF-BLS under the Commission’s existing rules.

a broadband-only line, her line and service will be supported via the CAF-BLS mechanism rather than the HCLS mechanism. But there still remain many voice and voice/broadband customers in high-cost areas whose lines continue to require HCLS and the Interstate Common Line Support (“ICLS”) portion of CAF-BLS if their rates are to remain affordable. Due to the disruptive impact of the RGF upon the HCLS cap, many of these voice and voice/broadband lines have been receiving far less support during recent years than has been sufficient to give their users access to quality state-of-the-art services at affordable rates.

Finally, WTA notes that, even after elimination of the RGF, aggregate HCLS support will still be capped and will increase only at a rate consistent with inflation like virtually all of the other Universal Service Fund mechanisms. As indicated above, WTA has previously proposed that aggregate HCLS be frozen at its 2018 level until 2026.

Conclusion

For the reasons and to the degree stated, WTA supports grant of both the Pineland and the Silver Star petitions for reconsideration of the specified limited portions of the *Report and Order*.

Respectfully submitted,
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