

**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
)	

**NTCA–THE RURAL BROADBAND ASSOCIATION
REPLY TO OPPOSITIONS AND
COMMENTS REGARDING
THE PINELAND AND SILVER STAR PETITIONS FOR RECONSIDERATION**

I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association¹ hereby submits this reply to oppositions and comments regarding two Petitions for Reconsideration filed, separately, by Silver Star Telephone Company, Inc.² and Pineland Telephone Cooperative, Inc.,³ in the above-captioned Federal Communications Commission (“Commission”) proceeding. The Silver Star Petition seeks reconsideration of the December 13, 2018 *Report and Order* provisions that declined to eliminate the High Cost Universal Service Fund (“USF”) High Cost Loop Support (“HCLS”)

¹ NTCA represents nearly 850 rural rate-of-return regulated telecommunications providers (“RLECs”). 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.

² Silver Star Telephone Company, Inc., Petition for Reconsideration, WC Docket No. 10-90, et al. (fil. Mar. 21, 2019) (“Silver Star Petition”).

³ Pineland Telephone Cooperative, Inc., Petition for Reconsideration, WC Docket No. 10-90, et al. (fil. Mar. 21, 2019) (“Pineland Petition”).

Rural Growth Factor and freeze the HCLS cap.⁴ The Pineland Petition seeks reconsideration of the *Report and Order's* determination that carriers that accepted the initial or revised Alternative Connect America Model (“ACAM”) offers in 2016 (so called ACAM I carriers) are not eligible for “ACAM II.”⁵

NTCA supports both petitions. The Silver Star Petition seeks to overturn the Commission’s 2018 decision to retain the HCLS rural growth factor and cap “as is.” As Silver Star correctly argues, the Commission ignored substantial evidence that these provisions produce unpredictability and insufficiency with respect to High Cost support that damages the company’s (as well as similarly situated operators’) ability to invest in networks capable of offering both voice and broadband services. The Pineland Petition, on the other hand, correctly argues that extension of the “ACAM II” offer to ACAM I electors would increase broadband speeds for many rural consumers. Grant of both petitions would result in improved or extended broadband access to rural America and would therefore serve the public interest.

II. THE SILVER STAR AND PINELAND PETITIONS ARE UNOPPOSED; GRANT OF THE PETITIONS WOULD ENABLE THESE RURAL PROVIDERS, AS WELL AS SIMILARLY SITUATED OPERATORS, TO INVEST MORE RESOURCES IN NETWORK DEPLOYMENT.

A. The Silver Star Petition Would Promote Greater Predictability and Sufficiency Within the High Cost USF Program, Enabling HCLS Recipients To Direct Additional Resources Toward Network Deployment.

The Commission should act upon the Silver Star Petition to eliminate the uncertainty and insufficiency attributable to the Rural Growth Factor. As discussed herein, grant of the petition would serve the public interest by enabling Silver Star and similarly situated recipients of HCLS

⁴ *Connect America Fund*, WC Docket No. 10-90, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18-176 (rel. Dec. 13, 2018) (“*Report and Order*”), ¶¶ 166-172.

⁵ *Id.*, ¶ 31.

to direct more resources toward deployment of advanced networks capable of delivering higher-quality voice and broadband services. In addition, the Silver Star Petition correctly argues that the Commission’s previous decision to leave the Rural Growth Factor in place ignored substantial and persuasive record evidence of the harm this provision produces. A review of the Silver Star Petition reveals that the decision it seeks to overturn contained a “material error...warranting reconsideration”⁶ and that the petition does not “[r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding.”⁷ The Silver Star Petition should therefore be granted as consistent with the Commission’s rules for Petitions for Reconsideration.

In its December 2018 *Report and Order* the Commission declined to eliminate or otherwise amend its HCLS Rural Growth Factor and related HCLS cap rules.⁸ In doing so, the Commission failed to consider substantial record evidence of the harm these provisions cause to rural consumers and the RLECs that serve them; the order also inexplicably demonstrated a lack of understanding of how HCLS is utilized. With respect to the former, as Silver Star notes in its Petition (and as a Blooston/SCC filing in support discusses),⁹ commenters responding to a March 2018 NPRM¹⁰ flooded the Commission with evidence detailing the unpredictability and insufficiency that stem directly from the HCLS cap declines caused by the Rural Growth Factor.

⁶ 47 C.F.R. 1.429(1)(1).

⁷ 47 C.F.R. 1.429(1)(3).

⁸ *Report and Order*, ¶ 170.

⁹ See Comments of the Blooston Rural Carriers and the Small Company Coalition, WC Docket No. 10-90, et al. (fil. Apr. 24, 2019) (“Blooston/SCC comments”).

¹⁰ *Connect America Fund*, et al., WC Docket No. 10-90, et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29 (rel. Mar. 23, 2018).

While the Commission acknowledged that a number of parties made such an argument,¹¹ at no point in the *Report and Order* was the specific argument or the evidence to back it up *ever actually addressed*. Instead, the *Report and Order* dismissed the proposal to eliminate the Rural Growth Factor and freeze the HCLS cap based on a number of reasons (the substance of which are addressed below) entirely unrelated to the unpredictability and insufficiency claims raised by numerous parties. For this reason alone, the Commission should find that the *Report and Order* provisions at issue contained a “material error...warranting reconsideration” and should consider the harms produced by the Rural Growth Factor and ultimately eliminate the provision and freeze the HCLS cap.

Moreover, with respect to the unpredictability that the Rural Growth Factor produces, something that the Commission neglected to consider as NTCA has previously noted,¹² relatively higher cost areas and states can present greater challenges in terms of enabling network deployment, and thus are generally in need of greater support. HCLS is a mechanism aimed at targeting additional funds to relatively higher-cost areas, even as the mechanism itself is subject to a cap on the overall level of such support available because of the Rural Growth Factor. Removing the effect of line loss within the so-called “Rural Growth Factor” and allowing HCLS to keep track with inflation or even just freezing it at current levels would provide greater certainty and stability within HCLS and provide greater incentives to invest in networks in these rural areas.

¹¹ *Report and Order*, ¶ 168 (“Commenters argue that the continually declining HCLS cap has resulted in an unpredictable and insufficient HCLS budget, and it hinders carriers’ ability to plan.”).

¹² Comments of NTCA, WC Docket No. 10-90, et al. (fil. May 25, 2018), pp. 68-69.

With respect to those harms as well as how HCLS is utilized, as Silver Star states, that support mechanism provides RLECs with essential cost recovery for loops already provisioned – that a customer may have discontinued voice service does not mean that costs no longer exist going forward for that line or that the cost of making it available in the first place has been recovered. Moreover, a number of states require RLECs to maintain those lines should service be requested again. Thus, the *Report and Order*'s view that “[w]here there are fewer lines to be supported, the amount of support should decrease”¹³ misses the point; individual connections are still in need of support even if a customer chooses to no longer take the voice service.¹⁴ Ultimately, due to the way RLECs recover a portion of their costs via HCLS, the decline in such support year-over-year requires them to divert other funds that would otherwise be invested in their broadband-capable networks. In that sense, the elimination of the Rural Growth Factor and HCLS cap does not provide a “disincentive for legacy carriers to deploy broadband networks”¹⁵ – rather, it only limits the resources they have available to do so.¹⁶

It must also be noted that elimination of the Rural Growth Factor and a freeze of the HCLS cap would not place upward pressure on the High-Cost Program budget. This surgical change to the High-Cost Program would, however, in keeping with the Commission’s laser-like

¹³ *Report and Order*, ¶ 170.

¹⁴ Even the Commission’s own cost model and its auctions recognize the “fixed cost” nature of connecting locations in rural areas; these mechanisms do not vary support based upon actual subscription because they rightly acknowledge that the costs of deploying and operating a network do not vary in this manner.

¹⁵ *Report and Order*, ¶ 171.

¹⁶ This argument that HCLS only furthers the availability of voice service also misunderstands the fundamental nature of network construction. While HCLS is tied to the provision of voice service, no operator today is building networks merely to provide such service. Voice is certainly an important consideration from the consumer perspective, but networks today are engineered to provide a wide variety of services, including broadband and voice. Indeed, since those operators that receive HCLS also receive CAF-BLS and thus have broadband buildout obligations attached thereto, it represents a fundamental misunderstanding of HCLS and the networks it enables to conceive of such support as *only* promoting the deployment of voice-capable networks.

focus on promoting broadband deployment, ensure additional resources for achievement of this worthy national goal.

Finally, it must be noted that the Silver Star Petition is *unopposed*. The one party commenting on the Petition provides the Commission with a thorough discussion of the harms caused by the Rural Growth Factor and HCLS cap rules as they exist today.¹⁷ This party, like NTCA, notes that these harms were ignored by the Commission in the *Report and Order*, and to fulfill its legal mandate to “meaningfully respond to the evidence” requires that it actually consider it and then render a decision so as to avoid an “arbitrary and capricious” order. Once the Commission does so and recognizes that the Rural Growth Factor harms broadband deployment, rather than incenting it, it should eliminate the provision and freeze the HCLS cap.

B. The Commission Should Grant the Pineland Petition and Allow ACAM I Carriers to Elect ACAM II.

The Commission should grant the Pineland petition and enable the provider and similarly situated operators that accepted ACAM I offers to elect the forthcoming “ACAM II” high cost support offer. As the *Report and Order* states, “it is likely that A-CAM II support will, in fact, spur deployment of higher speeds, even for carriers that were previously excluded due to their reported 10/1 Mbps deployment.”¹⁸ ACAM II thus is an important step in this Commission’s commitment to ensuring that rural America has access to the same type of broadband service that urban Americans have long been able to take for granted, and it should therefore be extended to operators willing to make this additional commitment to their communities regardless of prior elections.

¹⁷ See Blooston/SCC comments.

¹⁸ *Report and Order*, ¶ 40.

As Pineland states, precluding ACAM I carriers from obtaining the benefits of the ACAM II offer “creates a peculiar and unreasonable disparity among rural areas”¹⁹ and the consumers they serve, who should, by statute, have access to “reasonably comparable”²⁰ voice and broadband service. Grant of the Pineland Petition would place these consumers on equal footing, granting them the opportunity to have access to 25/3 or better broadband service that they may have never seen and may never see absent the opportunity offered by ACAM II. Such a result is a prudent use of High Cost program resources, as the additional program support would go directly toward fulfilling the Commission’s statutory responsibilities to preserve and advance universal service.

C. Additional Resources Should be Provided to Ensure Sufficient Support in Response to the Petitions.

The provision of sufficient support is required by law,²¹ and the Commission has taken significant steps to comply with that mandate in recent orders. In addressing the instant petitions, the Commission should not retreat now from its commitment to fulfillment of that statutory mandate. Thus, any resources that the Commission commits to address concerns regarding insufficient HCLS support as outlined in the Silver Star Petition and/or to promote broadened eligibility for ACAM II in response to the Pineland Petition must be “incremental” to existing High Cost program resources, and should not come at the expense of other providers or other USF mechanisms. The latter would only undermine other providers’ or programs’ efforts to improve the quality and reach of broadband networks in parts of rural America, shifting

¹⁹ Pineland Petition, p. 2.

²⁰ 47 U.S.C. § 254(b)(3).

²¹ *Id.* at § 254(b)(5).

resources from one rural community to the next as opposed to making a commitment to improving the state of rural broadband all across the nation consistent with a statutory mandate for universal service.

III. CONCLUSION

For the reasons stated above, the Commission should grant the Silver Star and Pineland Petitions for Reconsideration of the agency's December 13, 2018 *Report and Order*.

Respectfully submitted,



By: /s/ Michael R. Romano
Michael R. Romano
Senior Vice President –
Industry Affairs & Business Development
mromano@ntca.org

By: /s/ Brian J. Ford
Brian J. Ford
Director of Industry Affairs
bford@ntca.org

4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203
703-351-2000