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July 1, 2013

Ms. Jocelyn Boyd
Chief Clerk and Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

Re: South Carolina Telephone Coalition Petition to Modify Alternative Regulation Plans Filed Pursuant to S. C. Code Ann. § 58-9-576(B) to Take into Account Recent Action by the Federal Communications Commission
Docket No. 2013-55-C

Dear Ms. Boyd:

Enclosed for filing on behalf of the South Carolina Telephone Coalition please find a Response to the Motion of the South Carolina Cable Television Association to Require Reductions in Amounts Drawn from the USF in the above-referenced docket. All parties of record will receive a copy of this Response via the U. S. Postal Service.

Thank you for your assistance. If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

McNAIR LAW FIRM, P.A.

Margaret M. Fox

MMF:rwm
Enclosure

cc: Parties of Record

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COLUMBIA 1119436v1

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

Docket No. 2013-55-C

In Re:	South Carolina Telephone Coalition Petition to Modify Alternative Regulation Plans Filed Pursuant to S.C. Code Ann. § 58-9-576(B) to Take Into Account Recent Action by the Federal Communications Commission	))))))

SOUTH CAROLINA TELEPHONE COALITION RESPONSE TO MOTION OF SOUTH CAROLINA CABLE TELEVISION ASSOCIATION TO REQUIRE REDUCTIONS IN AMOUNTS DRAWN FROM THE USF

Pursuant to the Standing Hearing Officer's directive dated June 21, 2013 in the above-captioned matter, The South Carolina Telephone Coalition ("SCTC") respectfully submits this Response to the Motion of the South Carolina Cable Television Association ("SCCTA"), which was filed on June 14, 2013. By its Motion, SCCTA asks the Commission to reduce State USF for six companies (the "RLECs") that increased basic local residential rates to meet the FCC's rate floor.[1] SCCTA argues (1) the Commission's USF plan requires carriers of last resorts' ("COLR") USF withdrawals to be "revenue neutral;" therefore, State USF withdrawals must be reduced to offset the additional revenues from the recent local rate increases; and (2) 58-9-280(E) requires reduction in USF withdrawals because it provides that the USF shall be the difference between the cost of providing basic local service and the maximum amount the COLR can charge for the service.

[1] The six RLECs named in the motion are Chester Telephone Company, Home Telephone Company, Lockhart Telephone Company, PBT Telecom, Ridgeway Telephone Company, and West Carolina Rural Telephone Cooperative.

SCCTA is wrong on both counts. As explained below, State law does not require reductions in State USF amounts when carriers increase rates for basic local service. This is especially true in this case, where the Federal Communications Commission ("FCC") has mandated that RLECs must increase rates for basic local residential service or lose critical federal high cost support.[2] Unlike competitive carriers, COLRs have undertaken an obligation to serve all customers within a designated service area. In the current environment where various elements of federal support and intercarrier compensation are being capped, reduced or phased out, and additional broadband service obligations are being placed on COLRs in the face of declining support, rural telephone companies have an even greater need for State support.[3] At a minimum, they should not be penalized by having their state support reduced when they are taking necessary actions to retain the dwindling federal support they are eligible to receive.

A. Increasing basic local residential service rates does not impact the revenue neutrality of State USF

SCCTA misunderstands the revenue neutral aspect of State USF. State USF was implemented in a revenue neutral manner in that companies were required to identify and remove support that was implicit in rates for services *other than* basic local service. For example, intrastate switched access rates were priced well above cost and contributed substantial revenues to support basic local service. Those rates were reduced and the support was made "explicit" by moving it to the State USF. Thus, the support that was implicit in access rates is

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[2] *See Report and Order and Further Notice of Proposed Rulemaking, Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support*; *Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208; FCC 11-161, rel. Nov. 18, 2011 ("*USF-ICC Transformation Order*"), at ¶¶ 234-247.

[3] Among other reforms, the *USF-ICC Transformation Order* limits rate-of-return carriers' reimbursable capital and operations expense for purposes of determining High Cost Loop Support. *See USF-ICC Transformation Order* at ¶ 196. Additionally, as the Commission is aware from past proceedings, intercarrier compensation is being transitioned away from access and reciprocal compensation to CAF, on a significantly reduced basis, with rate-of-return carriers taking a 5% reduction in total revenues each year. *See id*. at ¶ 899.

now explicit and continues to be available to support basic local service, which continues to be priced well below cost to ensure that all citizens have access to basic local service at affordable rates. The revenue neutrality requirement was satisfied when the Commission found that certain rates included implicit support, and directed the affected companies to reduce those rates dollar-for-dollar and draw those amounts from State USF.

Increasing rates for (below cost) basic residential service does not have anything to do with the implicit support that was made explicit on a dollar-for-dollar (revenue neutral) basis. It simply moves the rate for basic local service closer to cost, potentially reducing RLECs' *future* need for additional State USF. As explained below, RLECs are not even close to drawing the maximum amount of State USF for which they are eligible. Therefore, the theoretical maximum amount of State USF or amounts they may need in the future have no bearing on the issue at hand.

B. Increasing rates for basic local residential service does not impact the amounts RLECs are currently authorized to draw

As SCCTA points out, S.C. Code Ann. § 58-9-280(E)(4) provides that the size of the State USF "shall be the difference, for each carrier of last resort, between its costs of providing basic local exchange services and the maximum amount it may charge for the services." This establishes the maximum amount of State USF for which the COLR is eligible. However, it does not impact the actual amount a COLR draws, which is equal to the amount of implicit support the COLR has identified and removed from rates that provide support for basic local service. Both the Commission and the Supreme Court of South Carolina recognized the distinction between estimating the maximum size of the State USF according to the formula in S.C. Code Ann. § 58-9-280(E)(4) and implementing or phasing in the funding on a dollar-for-dollar basis based on the reduction of rates that included implicit support for basic local service. *See*

Commission Order No. 2001-419 (establishing a phased-in approach for State USF with the maximum fund size determined as defined S.C. Code Ann. § 58-9-280(E)(4), and an implemented portion of the fund established based on dollar-for-dollar reductions in implicit support); Commission Order No. 2001-996, Exhibit A (Guidelines for South Carolina USF), Section 4 (defining revenue neutrality as reducing prices for intrastate services that contain implicit support for universal service to offset the gross amount received from the USF); *Office of Regulatory Staff v. South Carolina Public Service Commission*, 374 S.C. 46, 647 S.E.2d 223 (2007) (finding that the Commission correctly sized the Fund at $340 million (*i.e.*, the maximum size of the fund) according to the statute, and that the phased-in approach allows a gradual transition from the implicit support system to an explicit funding system upon a showing that implicit support exists in particular rates). In fact, the Supreme Court agreed with Commission counsel's argument that the Commission's orders should be affirmed in all respects, finding:

> The Commission's orders are meticulous in their factual determinations and decisions regarding the appropriate methods for implementing State USF. The orders issued by the Commission throughout its consideration of the USF show careful consideration of numerous proposals on the fund's implementation. … The orders alone and the orders for which the Commission considered motions for reconsideration have presented an insurmountable hurdle for Appellants in refuting the Commission's conclusion substantial evidence supports its decisions in developing the intricacies of the fund.

374 S.C. 54, 647 S.E.2d 227.

SCTC companies are not recovering more than their cost of providing basic local exchange service, even with the increases in basic local residential service rates. SCTC companies in the aggregate draw less than 20% of the maximum amount of State USF for which they are eligible, even after these basic local residential service increases. There is still substantial room for the SCTC companies to identify and remove implicit support from rates

other than basic local service and request additional funds from the State USF. In this scenario, there is no rational basis for reducing existing funding.

C. Reducing State USF is not in the public interest

It is important to keep in mind that the FCC's rate floor requirement is just one of the many aspects of comprehensive Universal Service Fund and Intercarrier Compensation reform at the federal level. Taken as a whole, these reforms will drastically reduce support not only from the federal USF, but also from intercarrier compensation revenues such as access charges, which historically have provided substantial support for basic local service in rural areas.[4] The effect of this comprehensive reform will not be to decrease the need for State USF, but will in fact put additional pressure on state mechanisms to further the important goal (as set forth by the South Carolina General Assembly) of ensuring that all citizens of South Carolina have access to basic local exchange telephone service at affordable rates.

The RLECs have increased basic local rates in response to an FCC mandate to do so or lose critical federal funding they currently receive. Again, this is being done against a backdrop of comprehensive reform that is reducing federal funding and intercarrier compensation, pushing more and more of the responsibility to the states to ensure that their citizens continue to have access to basic local service at affordable rates. At the same time, public policy dictates that consumers also have access to broadband service at ever-increasing speeds. The rural telephone companies of South Carolina historically have provided critical communications services in areas where no other carrier was willing to go, and they continue to do so today as carriers of last resort. If carriers cannot recover the cost of providing service in these high cost areas, it is the customers who ultimately will suffer.

[4] *See* footnotes 2 and 3, *infra*.

Respectfully submitted,

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By: _____

Attorneys for South Carolina Telephone Coalition

July 1, 2013
Columbia, South Carolina

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2013 - 55 - C

In Re:	South Carolina Telephone Coalition Petition To Modify Alternative Regulation Plans Filed Pursuant to S.C. Code Ann. § 58-9-576(B) to Take Into Account Recent Action by the Federal Communications Commission	**CERTIFICATE OF SERVICE**

I, Rebecca W. Martin, do hereby certify that I have this date served one (1) copy of the S. C. Telephone Coalition's Response to S. C. Cable Television Association's Motion to Require Reductions in Amounts Drawn from the USF in the above-referenced docket upon the following parties causing said copies to be deposited with the United States Postal Service, first class postage prepaid and properly affixed thereto, and addressed as follows:

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July 1, 2013

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