

**ORAL STATEMENT OF
COMMISSIONER AJIT PAI
APPROVING IN PART AND DISSENTING IN PART**

Re: *Connect America Fund*, WC Docket No. 10-90, *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, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *ETC Annual Reports and Certifications*, WC Docket No. 14-58.

In the *Universal Service Transformation Order*, the Commission performed the Heraclean task of reorienting the Universal Service Fund away from supporting telephone service and toward supporting broadband service. But no commissioner is the child of Zeus, so it is unsurprising that the Commission made some mistakes and left some labors unfinished. So here we are, reconsidering the *Transformation Order* for the *seventh* time. I welcome the continued collaboration with my colleagues, but I fear that some of today's decisions just set us up for reconsiderations eight, nine, and beyond. In particular, I strongly disagree with the Commission's decision to substantially increase many rural Americans' phone bills. I accordingly approve in part and dissent in part.

To start with the positive, today's order strikes the quantile regression analysis (QRA) benchmarks from our books. As Chairman Wheeler likes to say, this is a big deal. I applaud him for tackling this challenge, even though the benchmarks had been unanimously adopted in the *Transformation Order*.

This has been a long and hard struggle. When I first questioned whether the QRA benchmarks were good policy in 2012, many, including some in this building, told me that eliminating them was a hopeless cause and incremental change was all that could be accomplished. But as the QRA benchmarks' impact became more apparent, the tide turned. A unanimous vote for adopting the benchmarks turned into a unanimous vote to repeal them.

As we recognize today, whatever the intended purpose of the QRA benchmarks, in practice they chilled the investment climate and impeded the deployment of broadband to rural Americans. Even the U.S. Department of Agriculture's Rural Utilities Service told us that carriers had stopped taking out loans to deploy broadband because of them. The QRA benchmarks introduced substantial uncertainty into the marketplace. Carriers had no idea what support they would be receiving from one year to the next. That's a big problem. Investing in rural America is not a one- or two-year decision but a ten- or twenty-year commitment. Therefore, our policies must reflect the unique challenges that rural carriers face when building their networks. Just as important, the QRA benchmarks were not designed to save the Fund a dollar, so keeping them on our books just meant further hardships for rural America with no federal benefit.

I am also pleased that my colleagues agreed with my suggestion to propose a stand-alone broadband funding mechanism for rate-of-return carriers serving the highest-cost reaches of our country. Through a quirk of regulatory history, our rules offer universal service support to such carriers to build out broadband, but only when they bundle their broadband services with traditional telephone lines. That system has increasingly come under strain as consumers flee landlines in favor of wireless and over-the-top alternatives. Indeed, it has put some carriers to the Hobson's choice of offering stand-alone broadband—which urban consumers have and rural consumers want—and losing universal service support, or denying consumers that option, only to have them drop service altogether. The net result is that rural carriers hold back investment because they are unsure if they can deploy the services that consumers are demanding.

A stand-alone broadband mechanism should correct this vestige of our outdated rules. It would give consumers the real option of choosing whether they want to purchase broadband and telephone

service from the same company. Removing this barrier will give carriers more assurance that legacy regulations won't prevent them from responding to consumer demand. This will increase broadband deployment. And all of this will be done within the existing budget, something everyone with a phone line can celebrate. For these reasons, I hope that we move forward quickly to adopt final rules implementing a stand-alone broadband mechanism.

Unfortunately, I cannot support every aspect of the item. One particular problem is the Commission's reaffirmation of the "rate floor," an unfortunate legacy of the *Universal Service Transformation Order*. Under that policy, the FCC sets a minimum price that telephone companies can charge their customers for local telephone service—and penalizes those companies that do not comply with this government mandate. And as a result of that policy, over one million rural Americans can expect their local telephone rates to increase by up to 46 percent as the rate floor rises from \$14.00 to \$20.46 per month.¹

By design, the rate floor targets our farmers, our ranchers, our small-town entrepreneurs, and other rural Americans for a significant rate hike. It "will harm access to service for some of the most vulnerable consumers in rural America"² and "will impose a disproportionate burden on older Americans, who are much more likely to be living on fixed incomes."³ In other words, the rate floor targets those very Americans who are still waiting for the economic recovery to arrive.

But it won't affect Washington, DC. Even though the local phone rate in the District of Columbia is \$14.10, it's not subject to the rate floor.⁴ As a consequence, the FCC will be directing rural Americans to pay 45 percent *more* for local phone service than those living in the nation's capital do. That's not a problem for residents of northwest Washington, but I doubt it seems fair to residents of northwest Montana.

Another result of the rate floor will be less broadband deployment. Line loss is an all-too-real problem for rural telephone companies today—about one in seven households with copper dropped their landline in 2012⁵—and government-mandated price increases are only likely to send more consumers off the network. That makes it harder for rural companies to plan for the future and invest in their networks. That creates yet another disincentive to offer stand-alone broadband since those same companies may have to compete with over-the-top providers not subject to the same government-mandated price increases. In short, that moves us in the wrong direction.

So what justifies mandating higher prices and less broadband deployment for rural America? Not the Communications Act. It requires that telephone rates in rural areas be "reasonably comparable to rates" in urban areas and "affordable" to all consumers.⁶ And until the *Universal Service Transformation*

¹ See Petition for Extension of Time by ERTA, ITTA, NECA, NTCA, USTelecom, and WTA, WC Docket No. 10-90, at 5 (Mar. 11, 2014) (Rural Carrier Petition) ("[I]f the rate floor is raised as high \$20, about 1.2 million customers will incur sudden rate increases.").

² Letter from Jodie Griffin, Public Knowledge, Olivia Wein, National Consumer Law Center, Amalia Deloney, Center for Media Justice, Todd O'Boyle, Common Cause, Edyael Casaperalta, Center for Rural Strategies, and the Rural Broadband Policy Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (Apr. 15, 2014) (Public Knowledge et al. *Ex Parte* Letter).

³ Letter from David Certner, Legislative Counsel and Legislative Policy Director, AARP, to Marlene H. Dortch, Secretary, FCC, at 2 (Apr. 15, 2014) (AARP *Ex Parte* Letter).

⁴ See Wireline Competition Bureau, 2014 Urban Rate Voice Survey Results, <http://go.usa.gov/kRBY> (Apr. 18, 2014).

⁵ See Statement of Commissioner Ajit Pai on the Release of the 2013 Local Telephone Competition Report (Nov. 26, 2013), available at <http://go.usa.gov/kU4J>.

⁶ 47 U.S.C. § 254(b)(1), (3).

Order, those principles had consistently been interpreted to mean that our universal service policies should aim to reduce—not increase—the amount that rural consumers pay for telephone service.⁷ Which is hardly surprising given that rates can hardly be made more “affordable” by increasing them.

Moreover, the rate floor assumes that what’s affordable in our country’s largest cities is the same as what is affordable in the countryside.⁸ But that’s just not the case. Jobs pay more in the big cities. And families living there often have more disposable income. To illustrate, compare Washington, DC, where the monthly rate will remain \$14.10, to Ouachita County, Arkansas, where we have mandated an increase up to \$20.46. In DC, the median household income is \$64,627; in Ouachita County, it’s not even half that, \$32,032. So what does that mean? One year of phone service in DC will cost \$169.20, or about 0.26 percent of the median family’s household income. But one year of phone service will cost the median Ouachita County family \$245.52, so that family will need to spend 0.77 percent of their annual income on phone service, about three times as much as the family in Washington, DC. I cannot fathom how mandating such a result serves the public interest.

Nor, as some have claimed, does the rate floor reduce excessive subsidies for basic phone service. Recall that the rate floor was expressly designed to increase rural rates *without* reducing the subsidies that carriers receive. So long as carriers raise their rates up to the rate floor, they receive the *same* subsidy. Even with rural consumers paying more, there’s no savings to the Fund that could be used to decrease everyone’s rates or deploy more broadband.⁹

So what justifies the rate floor policy? How should we respond to consumers like Tressa White of Ouachita County, Arkansas, who wrote the Commission to complain that her local telephone company is raising rates to meet our floor? She asked, what she will “be receiving because of this increase in my monthly rate.”¹⁰ In a word, Tressa, nothing. As the AARP puts it, the rate floor “is a punitive burden on those households that continue to purchase wireline telephone service, with the higher rates benefitting only the local telephone company.”¹¹ Or as the National Tribal Telecommunications Association wrote, “asking . . . consumers to pay more for nothing in return is counterproductive to universal voice and broadband service goals.”¹² As far as I can tell, the purpose of the rate floor is to increase rural telephone rates for the sake of having higher rural telephone rates.

⁷ See, e.g., 47 C.F.R. § 54.316 (2011) (requiring states to certify that state-set rates in rural areas were no higher than two standard deviations above the average urban rate).

⁸ As Arctic Slope points out, “a broad brush policy that ignores the totality of disparity between urban and rural America and instead focuses on one aspect of disparity is poorly conceived. For instance, in ASTAC’s serving area, gasoline can exceed \$10 a gallon, staples like milk \$18 per gallon and electricity is \$.29 per kilowatt hour, almost three times the national average of \$.1029 per kilowatt hour. . . . For those who choose to live and work in rural America, there is no comprehensive comparability to urban areas where there is greater median income, better health care options, transportation and electrical grid infrastructure, faster and inexpensive broadband and advanced wireless communications.” Letter from Steve Merriam, CEO, Arctic Slope Telephone Association Cooperative, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, at 1 (Apr. 16, 2014).

⁹ To be fair, not all carriers may be able to increase their rates to keep pace with the ever-rising rate floor the Commission adopts today. As the rural carriers ably documented in seeking an extension of time to comply with this year’s rate floor, many states cap yearly rate increases, which may make strict compliance with the rate-floor mandate impossible. See Rural Carrier Petition at 3 n.12. But it is a strange thing to tout the monetary penalties we impose on carriers that do not comply with our mandate because states do not permit them to increase their rates as high or as quickly as the FCC would like.

¹⁰ Tressa White Comments, WC Docket No. 10-90 (Apr. 21, 2014).

¹¹ AARP *Ex Parte* Letter at 3.

¹² National Tribal Telecommunications Association Comments at 6 (Mar. 31, 2014).

I am not alone in thinking this policy makes no sense. Over the past few weeks, we've seen an outpouring of concern from all quarters about the continued implementation of the rate floor. Telephone companies like Pioneer in Kansas, Copper Valley in Alaska, and Frontier in West Virginia oppose the rate floor and the burden it will place on their customers.¹³ The independent carrier associations in Colorado, Idaho, Nevada, Oregon, and Washington have called for a "moratorium" and a "re-examination of the public policy issues surrounding the urban rate floor concept."¹⁴ A group of rural telecom associations has called on the FCC to "revisit the fundamental operation of the rate floor."¹⁵ Public Knowledge, the National Consumer Law Center, the Center for Media Justice, Common Cause, the Center for Rural Strategies, and the Rural Broadband Policy Group have asked us to "hit the pause button, step back and examine whether the proposed rate floor changes and implementation plan serve the underlying reasons for creating a rate floor in the first place."¹⁶

Nor is this a partisan issue. Senator Mark Pryor of Arkansas has urged us to reconsider the rate floor, as has his colleague Senator John Boozman.¹⁷ Alaska Senators Mark Begich and Lisa Murkowski and Congressman Don Young jointly have asked the FCC to freeze the rate floor and reexamine the underlying policy.¹⁸ And Senator Jerry Moran of Kansas has reminded us that the rate floor "only makes phone service less affordable in rural areas, where incomes are lower and families have fewer telecommunications options."¹⁹

Rural Americans aren't asking for free phones or free service. They're just asking the government not to mandate a 46 percent increase in their monthly bill. And when so many voices make such a reasonable request, it's very disappointing that the Commission's answer today is no. If we are trying to keep rural America in mind in everything that we do, our response should be different.

Yet the Commission moves forward, deciding today the rate floor will go into effect, albeit later than originally proposed. At least the delay is a good thing. By pushing back the first phase of the increase to January 1, 2015, the Commission has opened up a six-month window for us to reexamine this policy before it hits rural America.

¹³ See Pioneer Communications Reply at 4 (Mar. 31, 2014); Letter from David Dengel, CEO, Copper Valley Telephone Cooperative, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, at 1-2 (Apr. 16, 2014); Frontier Communications Reply at 2 (Mar. 31, 2014).

¹⁴ See Comments of the Colorado Telecommunications Association, Idaho Telecom Alliance, Nevada Telecommunications Association, Oregon Telecommunications Association, and Washington Independent Telecommunications Association at 3 (Mar. 31, 2014).

¹⁵ See Reply Comments by NTCA – the Rural Broadband Association, the National Exchange Carrier Association, Inc., the Eastern Rural Telecom Association, and WTA – Advocates for Rural Broadband at 4.

¹⁶ Letter from Jodie Griffin, Public Knowledge, Olivia Wein, National Consumer Law Center, Amalia Deloney, Center for Media Justice, Todd O'Boyle, Common Cause, Edyael Casaperalta, Center for Rural Strategies, and the Rural Broadband Policy Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (Apr. 15, 2014).

¹⁷ Letter from the Honorable John Boozman, U.S. Senator, to the Honorable Tom Wheeler, Chairman, FCC (Apr. 3, 2014); Letter from Mark Pryor, U.S. Senator, to the Honorable Tom Wheeler, Chairman, FCC (Mar. 26, 2014).

¹⁸ Letter from the Honorable Mark Begich, U.S. Senator, Lisa Murkowski, U.S. Senator, and Don Young, U.S. Representative, to the Honorable Tom Wheeler, Chairman, FCC, at 3 (Apr. 21, 2014).

¹⁹ Letter from the Honorable Jerry Moran, U.S. Senator, to the Honorable Tom Wheeler, Chairman, FCC (Apr. 22, 2014).

That's especially important because the Commission only released the rate-floor data and methodology last Friday, just five days ago.²⁰ With six more months, we can respond to the request of our state counterparts—those with actual authority over local telephone rates—to let the public study and comment on the data and methodology before the rate floor takes effect.²¹ That would be consistent with our past practice.²² It also would give time to the Universal Service Administrative Company to collect data on the actual number of consumers that will be hit by the rate floor (information the order expects will be collected this July).

So as the tide turned with the QRA benchmarks, I still hold out hope that it can be turned here. Just as tinkering around the edges wasn't good enough to save the QRA benchmarks, I don't believe that phasing in a big price hike for rural Americans will make this issue go away. I, for one, intend to keep making my voice heard.

Our decision with respect to the rate floor is all the more disappointing because today the Commission missed a chance to substantially reduce excessive subsidies in a manner that actually would have saved consumers money. Specifically, this item recognizes that wireless providers are deploying mobile broadband far more quickly, and far more extensively, than the Commission anticipated in the *Transformation Order*. Accordingly, the Commission does not need all the funding it has collected for the Mobility Fund Phase II in order to extend mobile broadband service to otherwise unserved areas including tribal lands. I therefore proposed that we return up to \$400 million a year to American consumers over the next five years. Rather than take this approach, however, the order proposes to keep the majority of the Mobility Fund Phase II intact—not because it's needed for deployment or even for maintaining service but instead because that's how much regional wireless providers are getting, even when they are using that money to compete with private investment and duplicate each other's service areas.

In sum, my proposals, taken together, would have cut unnecessary subsidies, protected rural Americans from substantial price increases, and lowered all consumers' phone bills. Unfortunately, today's item does the opposite. It leaves excessive subsidies untouched, raises rural Americans' phone rates by up to 46%, and doesn't return any money to American consumers. As a result, I must respectfully dissent in part from today's item.

²⁰ See Wireline Competition Bureau, 2014 Urban Rate Voice Survey Methodology, <http://go.usa.gov/kRZJ> (Apr. 18, 2014); Wireline Competition Bureau, 2014 Urban Rate Voice Survey Results, <http://go.usa.gov/kRBY> (Apr. 18, 2014).

²¹ Petition of NARUC, WC Docket No. 10-90, at 7 (Apr. 15, 2014).

²² As NARUC points out, until April 21, “unlike prior surveys, there [was] no public access to the underlying data/methodology.” Petition of NARUC, WC Docket No. 10-90, at 7 (Apr. 15, 2014).