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VIA sec.gov

Ms. Vanessa Countryman
Secretary, Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Request for Comment on Proposed Rule for Climate Change Disclosure – File Number S7-10-22

Secretary Countryman,

ACA Connects - America's Communications Association (ACA Connects) appreciates the opportunity to provide comment on the recently proposed rule from the Securities and Exchange Commission (SEC or Commission) regarding enhancement and standardization of climate-related disclosures (Proposed Rule).[1] ACA Connects is a trade association representing small and medium-sized Internet service providers, including some companies that would be subject to the Proposed Rule.[2] ACA Connects members provide high-speed Internet services in communities across America, often in rural areas and smaller markets. They are working tirelessly to close the "digital divide" by deploying networks in communities that lack quality Internet service today. As smaller service providers, they lack the same resources as larger companies in responding to new regulatory mandates.

Though ACA Connects does not routinely participate in matters before the SEC, some of our members do; thus, we feel compelled to provide comment on the proposed climate change disclosures and related requirements set forth in the Proposed Rule. Affected ACA Connects members are committed to meeting their existing disclosure obligations, including with respect to climate-related information. However, in this proceeding, the SEC proposes to vastly expand these obligations. As explained below, the proposed requirements would impose immense reporting and other burdens on ACA Connects member companies that far exceed any potential benefits for investors.

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[1] *See The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Proposed Rule, File No. S7-10-22, Release No. 33-11042 (2022).

[2] *See* ACA Connects – America's Communications Association, About ACA Connects, https://acaconnects.org/about/

Before proceeding further, we observe that registrants already operate under SEC guidance addressing "how the Commission's existing disclosure rules may require disclosure of the impacts of climate change on a registrant's business or financial condition."[3] This guidance appropriately acknowledges that "the impacts of [climate] risks on a particular registrant and how the registrant addresses those risks are fact-specific and may vary significantly by registrant."[4] The SEC has provided further guidance in its Sample Letter to Companies Regarding Climate Change Disclosures released in September 2021. This document provides more detailed guidance to companies on the factors that may be relevant to investors, and that companies should consider in their disclosures of climate-related information.

The Proposed Rule would depart from the SEC's established approach by imposing far more detailed and prescriptive reporting obligations on registrants. These proposed requirements are sweeping and overbroad. Registrants span many industries, and climate-related risks and financial statement impacts vary widely among companies. Current MD&A standards already require disclosure of climate-related impacts that are material to the registrant. We do not believe the additional disclosures the Proposed Rule would impose on ACA Connects members would provide value to investors that outweighs the associated burdens.

Below, we highlight some of the proposed requirements that raise significant concerns. This list is not meant to be exhaustive, but rather to illustrate the burdensome nature of the proposed disclosures and their lack of materiality and relevance to ACA Connects member companies' businesses.

- *Scope 3 Disclosures*. The Proposed Rule sets forth a requirement that registrants report "indirect" greenhouse gas emissions that "occur in the upstream and downstream activities of a registrant's value chain"—known as "Scope 3" emissions—if such emissions are "material."[5] This would be a highly burdensome reporting requirement of unprecedented breadth. Tracking and quantifying greenhouse gas emissions levels throughout the supply chain to gauge the "materiality" of and to quantify such emissions would be an enormously complex and costly undertaking for ACA Connects Member companies, to the extent the task is feasible at all.[6] ACA Connects Members generally lack oversight or control over, or visibility into, the emissions generated by third-party vendors and suppliers. Moreover, companies like ACA Connects Members that are relatively modest in size and lack market power are likely to face disproportionate

[3] Proposed Rule at 13-14.

[4] *Id*. at 18.

[5] *See* Statement of Commissioner Hester M. Peirce on Proposed Rule (explaining that "[t]he materiality limitation [with regard to Scope 3 disclosures] is not especially helpful" given how broadly the Proposed Rule appears to construe "materiality" in this context).

[6] Because vendors and other entities in the supply chain may not be registrants themselves, the proposed Scope 3 disclosures would greatly extend the reach of SEC regulation far beyond SEC-regulated companies.

burdens in obtaining such information from third-party vendors and suppliers. At any rate, given the tenuous relationship between Scope 3 emissions and a registrant's own practices, it is difficult to see how the benefits to investors of including this information on financial statements could justify the tremendous costs.

- *Equity-method Partnership Interests.* The Proposed Rule would require registrants to disclose their share of emissions from equity-method partnership interests. However, because registrants typically have no management or control over such entities, it may be difficult—if not infeasible—for a registrant to obtain and/or validate such information, especially so for smaller registrants. Also, equity-method partnership interests might not be publicly-traded and subject to SEC regulations, so they may not have systems in place to track such data. Thus, the Proposed Rule would, in effect, extend the scope of SEC regulations to equity-method partnership interests that are not subject to the SEC regulations. And once again, the tenuous relationship between the proposed reporting and a registrant's own practices casts into doubt whether the benefits for investors could justify the costs.

- *Board Oversight Disclosures*. The Proposed Rule includes a requirement for MD&A disclosure of the process by which the board has oversight related to climate-change initiatives, which would include identifying board members who have expertise in climate-related risks. While the Proposed Rule would not require each issuer to appoint a director to its board with climate expertise, the disclosure requirement – whether intentionally or not – will likely pressure companies to take that step regardless of whether doing so is in the company's best interests. Boards are designed to provide objective oversight of an organization holistically, and this involves addressing a multitude of risks. A narrow focus on climate risk may undermine expertise that could be valuable to the organization more broadly, to the detriment of investors. In addition, the proposed disclosures of the processes employed by the board and management in their oversight of climate-related risks would be unprecedented in detail.

- *Financial Statement Requirements.* Requiring new climate-related disclosures to be made within registrant financial statements would exacerbate the burdens discussed above. Financial statements are governed by generally accepted accounting principles (GAAP), and disclosure of immaterial climate-related information is outside of the scope and purpose of the financial statements. Inclusion in the financial statements would require separate Sarbanes-Oxley control frameworks as well as attestation by the registrant's auditor, which would increase costs and impose requirements that do not align with the purpose of financial statements. Contrary to the approach taken in the Proposed Rule, financial statements are typically constructed around what is material to the operations of the registrant.[7]

[7] The Proposed Rule mostly disregards a materiality concept, other than the proposal to require disclosure of any climate-related impact above 1% of any financial statement line, which is a much lower threshold than any reasonable application of materiality to a public company.

- *Third-party Attestation.* Requiring third-party attestation for disclosed emissions would result in substantial costs without a corresponding benefit. Requiring independent assurance of climate-related metrics would put a disproportionate burden on registrants with smaller environmental impacts.

In light of the foregoing, we urge the Commission not to adopt the burdensome disclosures and other requirements set forth in the Proposed Rule. At minimum, the Commission should forgo applying such requirements with respect to industries—such as telecom and internet service providers—that generate relatively modest carbon footprints and emissions levels. However, to the extent the Commission does adopt such requirements, registrants should be given more time to achieve compliance than the Proposed Rule contemplates. Implementation would involve substantial changes to various systems, processes, audit mechanisms, internal controls that cannot feasibly be completed within the proposed timeline, especially for registrants such as ACA Connects member companies that lack the resources of the larger companies.

Thank you for the opportunity to comment. We would be pleased to discuss our comments in more detail with you or the SEC Staff.

Sincerely,

Brian Hurley