

**Before the
Federal Communication 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)	WC Docket No. 07-135
Local Exchange Carriers)	
)	
Developing a Unified Intercarrier)	CC Docket No. 01-92
Compensation)	

Comments of TCA

I. Introduction

On December 13, 2018, the FCC released a Notice of Proposed Rulemaking seeking comment on several issues related to the Universal Service Fund High Cost Program (“USF” or “HCP”) for rate of return LECs (“RLECs”) receiving support through cost-based recovery mechanisms.¹ TCA sincerely appreciates the opportunity to comment on these important issues that directly impact RLECs, consumers in high-cost service areas, and the legacy budget. TCA strongly urges the FCC to retain a challenge process and opposes several other proposals, for treatment of areas with 100% or near 100% competitive overlap, due to the negative impact they would have on consumers in affected areas. TCA also supports expanding the Tribal Factor to legacy mechanisms, if it would not significantly burden the legacy budget.

¹ *Connect America Fund et al.*, WC Docket 10-90, *et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration (rel. December 13, 2018) (“NPRM” or “Order” as appropriate).

TCA is a national consulting firm that provides financial, regulatory and marketing services for more than one-hundred RLECs and their affiliates. The vast majority of TCA clients are rate of return regulated in the interstate jurisdiction and offer traditional voice and broadband services to their customers. Because of their sparsely-populated high-cost service areas, they are heavily dependent upon federal and state high-cost support mechanisms.

II. The FCC must retain a robust challenge process of competitive overlap to protect consumers

The FCC asks whether it should conduct a challenge process to verify affected study areas or rely solely on Form 477 data. The importance of retaining a challenge process cannot be overstated and the FCC must not be swayed from what is right in pursuit of what is easy. While relying solely on Form 477 data would be a faster way to determine possible competitive overlap, the Form 477 data has consistently proven to be flawed over the years. Therefore, using this data, without first vetting it, would be a mistake with potential irreparable harm to consumers. As Commissioner O’Rielly correctly states:

While a challenge process can be administratively burdensome and would create delays in implementing the second model offer, relying on the Form 477 data is hard to square with our ongoing proceeding on improving our broadband coverage data. I have been a longtime skeptic of this data to the extent that it is being used for purposes for which it was not designed or intended...Given the potential for a carrier’s total loss of USF support, the question of whether to hold a challenge process requires special consideration in that context. Ultimately, a challenge process is not a panacea, but it is better than blindly supporting Form 477 data as is.²

Commissioner O’Rielly makes the critical observation that a challenge process should be implemented in all USF contexts, but is especially necessary when a total loss of HCP support is at stake. In fact, the record is replete with reasons why treating Form 477 data as a gold standard

² FNPRM at Statement of Commissioner O’Rielly. at p. 129.

for determining competitive overlap would be damaging for providers, including competitors themselves rejecting this misuse of their data. Competitors who participated in past 100% overlap proceedings repeatedly indicated that their Form 477 filings should not be interpreted as providing 100% coverage in all census blocks listed, as they cannot guarantee that they serve every location in every census block they report.³ In other words, the very providers of Form 477 filings, upon which the FCC intends to rely, continually ask that their data not be interpreted or used in this manner. The FCC should heed these providers' requests and abandon any course of action that relies solely on Form 477 data without a challenge process.

Further, in its previously adopted 100% competitive overlap process, the FCC placed the burden of proof on the competitors⁴. This is wholly appropriate given the potential loss of all USF that RLECs would experience if an area were truly competitive. Although the Form 477 is certified by an officer of the company under penalty of perjury, there are no consequences for unknowingly filing erroneous data. RLECs have a strong interest in ensuring their data is as accurate as possible due to the FCC's continued use of their data for determining buildout obligations and other purposes that directly impact them. However, most competitors have no such inducements to file accurate data. Due to the nature of the Form 477 data submissions for fixed broadband providers, it can be very time-consuming and cumbersome to validate the accuracy of their submissions. TCA assists several Form 477 filers (both incumbent and competitive) and can confidently say that, without visualization tools, it would be extraordinarily rare for an employee at a company to: 1) know, with certainty, where each census block listed in its Fixed Broadband Deployment csv

³ For example, Letter from Beth Chorozer, Comcast, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Sept. 11, 2017). Letter from Ken Williams, President and CEO, W.A.T.C.H. TV Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Aug. 24, 2017).

⁴ Wireline Competition Bureau Publishes Preliminary Determination of Rate-of-Return Study Areas 100 Percent Overlapped by Unsubsidized Competitors, WC Docket No. 10-90, Public Notice (rel. December 14, 2015). at para. 20.

file is located, 2) have the ability to validate the data submitted for every block, or 3) be sure every block is listed. Census block boundaries are simply not a geographic basis upon which service providers design their networks, therefore components of the form, such as this, that are unfamiliar to filers require extra time to ensure accuracy. RLECs and their affiliates invest their time to ensure the accuracy of their data because it is so intertwined with their USF support mechanisms. On the other hand, for unsubsidized competitors with no such incentive, “good enough” may be all they submit, especially given the cost vs. benefit of determining accuracy for a report that holds no value for them. Unsubsidized competitors have no need to put forth the same effort as RLECs and their affiliates, as they know the FCC never validates their data, beyond checking that it has been submitted. Examples of this kind of activity already exist in the record and in other proceedings.⁵ If the FCC decides not to implement a challenge process, alternatively, it should adopt requirements where, before deeming an area competitive, a qualifying competitor must subject itself to the HUBB and Performance Testing obligations (adopted in the USF HCP) to prove it is actually providing services and delivering advertised speeds to locations in the area. This would help to ensure that an area is truly served by the competitor and that customers will have a choice of providers if support is diverted from the RLEC.

⁵ For example, Letter from Free Press. *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket 18-238. (filed March 5, 2019). This letter points out Form 477 data filed by Barrier Communications Corporation that reports coverage in all census blocks within eight states at very high speeds, but which contradicts Barriers public service offerings on its website. Also, Letter from Agate Mutual Telephone Cooperative Association. *Connect America Fund et al.*, WC Docket 10-90, et al. (filed April 22, 2016). Letter from Fort Mojave Telecommunications, Inc. *Connect America Fund et al.*, WC Docket 10-90, et al. (filed February 16, 2016).

III. If the FCC reduces RLEC support in competitive areas, it must ensure the remainder is sufficient for ongoing service obligations

As TCA has previously advocated, it does not endorse the use of auctions for distributing support in competitively overlapped areas in any way.⁶ When auctions distribute support in competitively overlapped areas without verifying that competition truly exists, they add additional layers of problems. First, these auctions create the potential of injecting artificial competition into a market that would not support unsubsidized competition, contrary to the FCC’s principles to support no more than one provider in an area.⁷ Auctions would also incentivize “cherry-picking” lower cost areas if the FCC also allowed sub-study area bidding. This is especially true if the FCC were to adopt its proposal of allowing any provider (not just current providers) to bid on an area. If a study area is deemed competitive due to erroneous data, and any provider can come in and pick the areas it wants to serve, economic principles suggest that they will choose the lower-cost areas over the higher-cost areas to maximize the effectiveness of their bid. The FCC must address what then happens to these unserved high-cost area customers. In its partially funded census blocks process, the FCC identified this problem and adopted several disaggregation methods to ensure the true costs of serving high-cost customers are recoverable when they are not averaged out with lower-cost customers in the study area.⁸ If the FCC adopts a sub-study area mechanism, it must also include the ability for RLECs to disaggregate.

⁶ Comments of TCA. *Connect America Fund et al.*, WC Docket 10-90, et al. (filed May 25, 2018) (“TCA Comments”).

⁷ 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 a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*, WC Docket No. 10-90, et al., (rel. November 18, 2011). FCC 11-161. at para. 11. (“USF/ICC Transformation Order”).

⁸ Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking *Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90, et al. rel. March 30, 2016). FCC 16-33. at paras. 138-414. (“2016 RoR Reform Order”)

Especially problematic is the FCC’s proposal to set the level of broadband competition at 25/3Mbps, regardless of the technology or speeds already offered by the RLEC. Customers continue to demand higher speeds and many RLECs have deployed fiber networks capable of providing speeds that far surpass 25/3Mbps, some even offer Gigabit Services.⁹ For the FCC to potentially strip support from these providers to fund competing technology at slower speeds in the area would be wasteful and contradictory to its mission of eliminating the digital divide.¹⁰ Even the FCC’s proposal of using CAF II weighting in evaluating bids does not effectively solve this problem. Indeed, the CAF II auction framework is not appropriate in this context. The CAF II auction is intended to distribute support to areas that lack sufficient access to broadband.¹¹ In this instance, the FCC intends to potentially overbuild a robust broadband network. Not only is this grossly inefficient, it would potentially disrupt the RLEC customers in the area who enjoy reasonably comparable service and rates due to the USF support that the RLEC receives. These customers would, at a minimum, face increased rates for their services, or service disruptions with the only alternative being a lower-quality service than the one they currently subscribe to.

⁹ See, NTCA Gig-Certified Provider designations, which require independent confirmation from an engineering firm familiar with the network. <https://www.ntca.org/member-services/awards-recognition/certified-gig-capable-provider/gig-capable-providers-list>. Viewed, March 7, 2019.

¹⁰ See Chairman Ajit Pai’s Selected Issues: Broadband. <https://www.fcc.gov/about/leadership/ajit-pai>. Viewed March 7, 2019.

¹¹ *USF/ICC Transformation Order*. at para. 170.

IV. Regardless of the method, the FCC should ensure sufficient predictable support in terms similar to ACAM and CAF II

TCA is in favor of the FCC continuing its efforts to bring as much predictability to its support mechanisms as possible.¹² Network investments are long-term decisions which require strong levels of certainty to make the business case. Providers of these networks must be reasonably certain that they can continue operating and may also need to justify carrying long-term debt as a result of making such investments. The FCC recognizes this need for long-term support streams in ACAM and CAF II mechanisms, and it should adopt the same approach for legacy mechanisms.¹³ Specifically, the FCC should only conduct a 100% competitive overlap process once every 10 years. This will provide the long-term predictability necessary for RLECs to plan for the future.

However, if the FCC moves forward with an auction-type mechanism in competitive areas, it should implement a stop-gap measure that will protect consumers if a non-RLEC awardee fails to meet its obligations under the program. In other words, there should be a provision allowing an RLEC to obtain support (based on its actual costs) for serving an area where the awardee defaults. The use of auction-type awards in competitive areas is a novel process, and precautions must be taken to ensure consumers are protected. Including a stop-gap measure provides one more layer of certainty for consumers in affected areas, so that they are not as likely to be harmed if this process fails.

¹² *TCA Comments*.

¹³ *2016 RoR Reform Order*, at para. 22. Also, *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order. (rel. December 28, 2014). FCC 14-190, at para. 29.

V. The FCC should apply a Tribal Factor to Legacy Mechanisms in a manner that does not burden the legacy budget

TCA has long supported FCC proposals that recognize the unique challenges faced by providers serving tribal lands.¹⁴ In this context, TCA does not object to proposals that would apply a Tribal Factor to legacy mechanisms, like the factor adopted in ACAM II, if that factor does not burden the legacy budget. The FCC has taken the appropriate steps to address budget shortfalls in the legacy mechanisms that lead to widespread insufficiency and unpredictability in the fund, contrary to the principles of USF.¹⁵ This work should not be undone due to well-intentioned policies. One way for the FCC to ensure a Tribal Factor does not burden other legacy providers is to treat it like a separate mechanism with its own budget. The FCC has already decoupled the budgets for other RLEC mechanisms so that changes in one does not affect the others.¹⁶ TCA recommends a similar treatment for any future Tribal Factors. This will give Tribal providers the extra assistance they need while avoiding potential burdens on non-tribal providers.

VI. Conclusion

TCA greatly appreciates the opportunity to provide input into ongoing considerations in the RLEC USF mechanisms. The FCC must retain a challenge process and not rely solely on Form 477 data for determining study areas with 100% competitive overlap due to flaws in that source of information. It must also avoid potential auction pitfalls that could leave customers with lower quality or more costly service than they access today. The FCC should also continue its efforts to

¹⁴ *TCA Comments*, at p. 5.

¹⁵ *Order* at paras. 72-100.

¹⁶ *Ibid.* at paras.

bring stability to the fund by only conducting this process once every 10 years. Finally, while TCA supports expanding the Tribal Factor to legacy mechanisms, this factor should be kept separate from the legacy budget.

Respectfully submitted,

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