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

COMMENTS OF TRIANGLE TELEPHONE COOPERATIVE ASSOCIATION

Triangle Telephone Cooperative Association ("Triangle" or the "Cooperative") hereby submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") December 13, 2018 Further Notice of Proposed Rulemaking, wherein the FCC seeks input on measures to address concerns that some rate-of-return carriers receiving Universal Service Fund ("USF") support may be seeking to "game" the fund by moving consumers onto broadband-only lines for the purpose of artificially increasing the amount of consumer broadband-only line ("CBOL") support that they receive.[1] Triangle applauds the Commission for not only providing additional funding for both Alternative Connect America Model ("A-CAM") recipients and legacy USF recipients in the December 13, 2018 Report & Order, but also for considering ways in the *FNPRM* to ensure that the principles of USF are upheld and waste, fraud and abuse of system are mitigated. Although the FCC adopted a seven percent budgetary

[1] *See Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration,* WC Docket Nos. 10-90, 14-58, 07-135, CC Docket No. 01-92 (rel. Dec. 13, 2018), FCC 18-176 ("*FNPRM*").

increase to resolve concerns that the amount of support required will also increase as more carriers move from offering voice and voice/broadband lines to broadband-only lines, the FCC seeks comment on several additional measures to reduce the likelihood of arbitrage. Triangle respectfully submits these comments in response to the *FNRPM*.

Triangle is a legacy rate-of-return carrier and cooperative in Montana. Triangle has been in business since 1953. The Cooperative covers approximately 24,000 square miles of expansive and remote service territory with less than 12,500 members. This territory also includes two Native American reservations. One of the reservations is served 100 percent with fiber-to-the-home ("FTTH") and the other reservation has over 86 percent broadband coverage, with 51 percent of the Tribal members having fiber access. Triangle's sheer size and extremely sparse, rugged, and challenging service territory makes the Cooperative more "frontier-like" than simply rural. Triangle has been deploying FTTH for almost ten years and has completed FTTH deployment to 61 percent of its total membership as of the end of 2018. Triangle began its laborious transition to FTTH long before the A-CAM was offered by the FCC. Triangle plans to continue to deploy fiber wherever possible and work towards 100 percent FTTH. The Cooperative believes FTTH is needed for the speeds necessary to compete in today's market and to provide economic development opportunities to its members. Triangle's plan is to reach 100 percent of its members with fiber optic cable, but only if cost recovery support continues to exist and allows the Cooperative to meet its financial requirements. The budget control mechanism ("BCM") that the FCC put in place in 2017 and 2018 hit Triangle very hard on the High Cost Loop Support ("HCLS") funding that is supplied via the USF cost study process.

Triangle knows very well how unexpected dollars removed from the USF mechanisms affect a company. The FCC has adopted the rules surrounding CBOL deployment, and Triangle

has moved forward with a broadband-only service offering and will continue to make it a viable offering into the future. As the industry moves toward a CBOL environment, it is very important that companies that utilize USF for their cost recovery do not take advantage of the situation and require budget mechanisms to be put on the legacy companies once again. For a company that has been trying to do everything "by the book" in terms of how USF is supposed to be used properly, Triangle cannot afford to be the recipient of actions taken to correct another company's efforts at waste, fraud and abuse of the USF program.

I. LIMITS ON CONVERTED LINES

The first proposal that the FCC offers in the *FNPRM* is adopting limits on the number of converted lines for which a carrier may seek CBOL support, which parties have suggested to the FCC as a "useful method of limiting increases to the budget."[2] The upside of this approach is that it would allow for a prescribed increase of the budget, but the downside is that it would put an "artificial constraint" on conversions to broadband-only lines.[3] The trajectory of demand for broadband-only lines could very well exceed the limit in a future year. This methodology also may not eliminate the type of arbitrage that these proposals are seeking to mitigate, because carriers could still adjust line counts to take the maximum advantage of CBOL support.

Some in the industry support a higher limit in the first year or two that a carrier implements CBOL due to pent up demand for broadband-only lines. Although there is a demand, that demand is not so great as to move customers to CBOL for the benefit of the company over those individual customers that want CBOL service. Triangle thinks that a ten percent demand for each company for CBOL is reasonable percentage for the FCC to use for budget control. Allowing a higher demand without checks and balances will create numerous issues. Allowing

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[2] *Id.* at para 201
[3] *Id.*

companies to move as many lines to CBOL as possible will put pressures on the USF budget. Companies that would move their customers to CBOL without an actual customer request will reap the benefits of moving from 25 percent interstate calculations to 100 percent calculations for those new CBOL loops. By doing this, they are increasing their cost recovery mechanisms without consideration as to the impact on other companies that are also utilizing the mechanisms. Since Triangle's USF is linked to the amount of spending by other recipients of USF funding, the Cooperative has seen firsthand through the BCM how the decisions of others affect a company.

Triangle feels that moving customers to CBOL without the customer requesting it is a form of "gaming the system". Companies pursuing this method to drive up their cost recovery without legitimate customer demand should have a stopgap in place by the FCC to ensure equitable and fair treatment of the fund for all recipients. Triangle does not believe that the rate-of-return industry should engage in self-policing to ensure that nobody is gaming the system. A peer company cannot force another company to act in accordance with a standard for migrating customers to CBOL in the absence of regulations. Without some sort of penalty or reduction of USF support as a consequence for gaming the system, bad actors will continue to exist and put financial pressure on other companies.

The FCC should establish a ten percent rate of conversion to broadband-only lines annually per company, which would begin when the company first implements CBOL, to safeguard that correct behaviors are exhibited and to ensure that the distribution of funds from the available dollars are not stressed similar to when the BCM was implemented.[4] The FCC should consider adopting a streamlined waiver process for companies that can prove through

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[4] Triangle recommends that for companies that have already implemented CBOL, the ten percent per year transition to CBOL is calculated beginning with the date that CBOL was first implemented, *i.e.*, January 1, 2017, or the date they first made the offering available if that date is after January 1, 2017.

their marketing, customer orders and technological movement that their CBOL increased more than ten percent annually due to customer demand and requests for broadband-only lines.

A company's technological migration to CBOL also needs to be addressed. Companies who adopt the method of moving customers to CBOL rates without doing any technological changes in their network, at the customer's home, or without the customer's knowledge, are blatantly gaming the system. NECA has produced documentation on how the network is to be configured, yet without an actual field audit there is unfortunately no way of knowing if some are gaming the system. The FCC might consider releasing technical guidelines on migrating to CBOL and what counts and does not count in the annual ten percent increase.

II. CONVERTED LINES LOSE HIGH COST LOOP SUPPORT

Next, the FCC is considering whether carriers should immediately lose HCLS for any lines that are converted to CBOL. The FCC observes that once a carrier converts a line to broadband-only, it immediately begins receiving a higher level of CAF-BLS in addition to continuing to receive HCLS, and claims that "eliminating HCLS for converted lines would still provide carriers with sufficient support."[5] Triangle opposes this proposal. HCLS is based upon each company's embedded, unseparated loop costs. Therefore, HCLS is reimbursing legacy carriers for investments and expenses *already incurred* in deploying broadband-capable networks over which both voice and broadband can be offered. Indeed, as affirmed in the 2*016 USF Reform Order*, "[c]arriers that have heavily invested in recent years are likely to be receiving significant amounts of HCLS."[6] According to that order, the introduction of CBOL does not replace this support. Instead, the order explains that, "[b]y providing support for the

[5] *FNPRM* at para. 202.

[6] C*onnect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90, et al., Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, para. 66 ("*2016 USF Reform Order*").

costs of broadband-only loops, while continuing to provide cost recovery for voice-only and voice-broadband loops, the expanded CAF-BLS mechanism will create appropriate incentives for carriers to deploy modern broadband-capable networks and to encourage consumer adoption of broadband services."[7] As noted above, Triangle delivers service in very rural and remote places in Montana. Without the addition of the HCLS to ensure sufficient recovery of investments and expenses that were incurred before the addition of CBOL or the establishment of A-CAM, it would continue to be extremely difficult to recover these already-incurred costs.

III. ENCOURAGING THE TRANSITION TO BROADBAND

Third, the FCC notes that parties have suggested that some rate-of-return carriers are switching consumers from traditional telephone service to VoIP for "the sole purpose of maximizing overall support amounts."[8] The FCC seeks comment, essentially, on how to strike the right balance of encouraging the transition to broadband-only lines but discouraging carriers from arbitrage that would increase their support amounts just for the sake of extracting more money from the fund. In order to come up with a framework that both encourages the transition to broadband-only lines and discourages arbitrage, the FCC ought to have a way to determine whether a carrier is indeed migrating customers to broadband-only lines for the "sole purpose of maximizing overall support amounts," or if the migration was part of a desired, planned transition. As explained above, one way this can be accomplished is establishing a reasonable limit for the conversion of lines with a streamlined waiver process if the limit is exceeded and the company is able to provide the required evidence that it is not gaming the system.

The FCC asks if there is a way it can adjust its CAF-ICC rules to discourage arbitrage. The CAF-ICC rules "require carriers to impute an amount on broadband-only lines equal to the

[7] *Id.* at para. 87.
[8] *FNPRM* at para. 203.

ARCs they would have assessed on voice and voice/broadband access lines."[9] The FCC then asks what measures it can take "to prevent carriers from gaming this apparent mismatch," such as, perhaps, imputing some portion of revenues from a converted line where the customer subscribes to interconnected VoIP for voice services, against its CAF-ICC support.[10] Triangle opposes adjusting CAF-ICC for carriers. The FCC established CAF-ICC to partially offset revenues reduced as a result of the intercarrier compensation ("ICC") rate transition. CAF-ICC is subject to a fixed annual reduction of five percent to take into account the migration of customers away from voice lines which already accounts for the transition of customers from voice lines to broadband-only lines—there is simply no need to add another reduction on top of the five percent. As described in the *USF/ICC Transformation Order*, the CAF-ICC recovery mechanism is "limited in time and carefully balances the benefits of certainty and a gradual transition with [the FCC's] goal of keeping the federal universal service fund on a budget and minimizing the overall burden on end users."[11] Imputing revenues from a converted line against CAF-ICC support when a customer subscribes to interconnected VoIP for voice services would disrupt this carefully balanced mechanism, introduce uncertainty and remove CAF-ICC from being on a fixed and known budget. Accordingly, any changes to the Commission's CAF-ICC rules would be against the public interest and should not be made.

[9] *Id.* at para. 204.
[10] *Id.*
[11] *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 Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) at para. 847 ("*USF/ICC Transformation Order*"); aff'd sub nom., In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

IV. CONCLUSION

The FCC is asking for real answers to real questions that will have an impact on rural deployment of broadband services. Although those that may be gaming the system will not like what Triangle has stated here, Triangle feels strongly that its arguments need to be on the record. Triangle endured significant financial losses from the BCM; but fortunately for the Cooperative and other rate-of-return companies who were significantly adversely impacted by the BCM, the FCC returned those funds to carriers that have been doing the appropriate building and maintenance of their networks in order to expand and improve broadband coverage. USF support helps Triangle provide essential broadband services to rural Montanans, including two Native American reservations. Support for these essential services is vital to ensure rural Montana has economic development and parity with its urban and suburban neighbors, and universal broadband is the key to achieving that parity. Putting a ten percent annual limit per company on the CBOL conversion from its inception will ensure that the budget is not unfairly distributed to companies gaming the system by migrating—with or without consumer buy-in—large portions of customers to broadband-only lines at one time in order to reap financial benefits from USF. Continuing the HCLS system for companies such as Triangle is vital to covering the financial requirements that were previously incurred in deploying a state-of-the-art, "future proof" fiber network. At some point Triangle will look to converting its voice offering to VoIP—as needs of its members change, Triangle will change with them. By not moving in this direction quickly to game the system, Triangle is ensuring that the available funds are there for everyone. Making sure that there is a smooth transition for all parties involved in the USF process is the fair and equitable way to deal with CBOL and the HCLS situation.

Respectfully submitted,

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