

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

**COMMENTS
of
THE CONCERNED RURAL LECS**

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APPENDIX A: The Concerned Rural LECs

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I. INTRODUCTION AND SUMMARY

The Concerned Rural LECs hereby submit these comments in response to the Further Notice of Proposed Rulemaking (FNPRM) released on December 13, 2018 in the above-captioned dockets.² The comments address how to implement an auction mechanism for competitive overlapped legacy rate-of-return study areas, as well as broadband-only line conversions. The Concerned Rural LECs are a diverse group of rate-of-return incumbent local exchange carriers (ILECs) that serve rural areas throughout the United States.

¹ The Concerned Rural LECs consist of the rate-of-return ILECs individually identified in Appendix A.

² *Connect America Fund; ETC Annual Reports and Certifications; Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime*, WC Docket Nos. 10-90, 14-58, and 07-135, CC Docket No. 01-92, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18-176 (rel. Dec. 13, 2018) (*December 2018 Rate-of-Return Reform Order and FNPRM*).

The rules the FCC adopts for an auction to award support in entirely or almost entirely overlapped legacy rate-of-return study areas should, first and foremost, ensure that all consumers residing in those areas retain access to modern, affordable voice and broadband services. Auctions should be limited to legacy study areas that are 100% overlapped by qualifying unsubsidized competitors. In addition, the Commission must conduct a challenge process before finalizing the determination of areas that will be subject to the auction so that there is a real-world check on the coverage data competitive carriers report on the Form 477. If auctions were to be conducted in study areas that did not have 100% competitive overlap, the continued availability of universal service could be jeopardized.

The minimum geographic bidding area for the auction should be as large as possible. Using the entire study area as the minimum bidding area would be most appropriate in order to establish similar service obligations between the carrier-of-last-resort ILEC and any other winning bidder. At the very least, census tracts or census block groups (CBGs) should be used. Reserve prices should be set using the ILEC's total legacy support from the prior year, and disaggregated via a methodology chosen by the incumbent. It would be inappropriate to base reserve prices on the Alternative Connect America Cost Model (A-CAM) in areas where the incumbent did not elect the model to determine their high-cost support.

Eligible participants in the auction should be limited to the incumbent and existing unsubsidized competitors in the study area that are offering services meeting the FCC's service obligations. This will provide a greater level of assurance that winning bidders will be technically and financially capable of meeting their public interest obligations.

In cases where the incumbent is not the sole winning bidder in an auction, the ILEC should be afforded the opportunity to recover the entirety of their network investment costs that

were incurred to meet public interest obligations that existed prior to the auction. At the very least, ILECs should not have their support reduced for areas where a competitor is the winning bidder until the competitors are fully capable of providing the required services to all locations in those areas. Furthermore, auctions for overlapped legacy study areas should be conducted very infrequently – every 7 to 10 years at most – due to the uncertainty they create and the disincentive they will have on carriers to invest in their networks to the greatest extent possible.

With regard to the conversion of lines to broadband-only, the Commission should not adopt limits on the number of converted lines for which a rate-of-return ILEC may seek broadband-only support in a given year. A cap on the number of supported conversions would be inconsistent with rural consumer demand for broadband-only lines. It would also fail to account for the different rates of adoption of broadband-only lines among rate-of-return study areas. Finally, the rules for High Cost Loop Support (HCLS) and Connect America Fund Intercarrier Compensation (CAF ICC) support should not be modified for the conversion of lines to broadband-only. Doing so could prevent rate-of-return ILECs from recovering their investments in local loop, local switching, and fiber transport network facilities.

II. AUCTION FOR ENTIRELY OR ALMOST ENTIRELY OVERLAPPED AREAS

A. An auction should only be used to award support in legacy rate-of-return study areas that are 100% overlapped by qualifying unsubsidized competitors

The Commission should award high-cost support through competitive bidding only in legacy rate-of-return study areas that are *entirely* overlapped by qualifying unsubsidized competitors – i.e., 100% overlap. However, if the Commission decides to include almost entirely overlapped study areas, then the bar should be set at 99%. An overlap threshold of

100% or 99% provides greater assurance that the competitors who participate in the auction³ are sufficiently invested in the study area and have the financial and technical capability to meet the FCC's public interest obligations for the vast majority of the area. It is essential that competitors bidding in the auction are capable of serving not only the lower cost "town" areas, but also the remote, hard-to-serve areas as well. This is the true meaning of universal service, and if auctions were to be conducted in study areas that did not have ubiquitous (or near ubiquitous) competitive overlap, the continued availability of high-quality, affordable services in these areas could be jeopardized.

B. A challenge process must be conducted to verify the affected study areas

The Commission must conduct a challenge process before finalizing the determination of study areas that are entirely or almost entirely overlapped by qualifying unsubsidized competitors. If the Form 477 data relied upon by the Commission is not fully accurate – and the Concerned Rural LECs are confident that it is not – incumbent carriers could unfairly and unnecessarily lose critical high-cost support in areas where a competitor erroneously reported coverage.

Recent history has shown that the Commission cannot rely solely on the Form 477 or other service coverage data reported by many carriers. In the *A-CAM Challenge Order*, the FCC granted nearly half (47%) of the challenges that argued a competitor does not provide voice or broadband or does not offer these services at levels meeting the Commission's service obligations.⁴ This demonstrates that competitive coverage was misreported in a manner that was

³ The entities that are eligible to participate in an auction in a particular study area should be limited to the incumbent and existing unsubsidized competitors that are providing voice and broadband services meeting the FCC's service obligations in that study area. *See* Sec. II.F. *infra*.

⁴ In the A-CAM challenge process, the FCC granted 61 challenges, and denied 68 challenges, that argued a provider does not provide voice or broadband or does not offer these services at levels meeting the Commission's service obligations. (The Commission also declined to take action in response to 124 challenges where the challenge

meaningful to the Commission at the time. This is not insignificant and the Commission should not dismiss it as such in an attempt to forego a challenge process here, as it appears prepared to do with the upcoming A-CAM II support offers.⁵

In addition, the challenge process that is being conducted for the Mobility Fund Phase II (MF II) auction provides further evidence that the coverage data reported by carriers should not be assumed to be accurate. Specifically, in December 2018, Chairman Pai announced that the FCC has launched an investigation into whether one or more major carriers violated the MF II auction's mapping rules and submitted incorrect coverage maps.⁶ In fact, the rule violations appeared significant enough to cause the Commission to suspend the next step of the challenge process pending the conclusion of the investigation. If some of the largest carriers in the country are unable (or unwilling) to accurately report their 4G LTE coverage, why would the Commission accept at face value the Form 477 data reported by much smaller competitive providers, with far fewer resources and reporting capabilities, without a challenge process?

requested a change that was infeasible or unnecessary to make.) *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 7790, 7800, 7804, paras. 1, 19, 36, 47 (2016) (*A-CAM Challenge Order*).

⁵ The Concerned Rural LECs strongly oppose the FCC's decision to forgo a challenge process prior to extending the A-CAM II offers, as it will potentially preclude several carriers from participating in the A-CAM II due to erroneously reported competitive coverage in the Form 477. Just because the A-CAM II is optional does not mean that offers of model-based support should be allowed to be based on inaccurate Form 477 data, thereby unfairly denying some legacy rate-of-return carriers an opportunity to participate. The A-CAM I competitive coverage error rate was too high to believe that the data used for the A-CAM II offers will not suffer from similar errors. The FCC could hold a modified challenge process that would not significantly delay the implementation of A-CAM II or unduly burden the Commission. For example, the FCC could allow carriers to report suspicious Form 477 reporting for further review by, and at the discretion of, the Commission. In essence this would expand on the current and generally successful review process conducted by FCC staff, but would add a layer of information provided by those most knowledgeable on the competitive carriers in individual study areas. If the Commission has already reviewed the reported carrier's data, it could simply decline to perform an additional review, or it could determine that additional review is warranted. Additionally, or alternatively, the FCC could issue a public notice reminding service providers of their obligation to accurately report the availability of voice and broadband services in the Form 477, and provide carriers with a short window (e.g., 30 days) to amend their December 31, 2017 Form 477 data in advance of making the A-CAM II offers.

⁶ *FCC Launches Investigation into Potential Violations of Mobility Fund Phase II Mapping Rules*, News Release (Dec. 7, 2018).

There are likely many examples of inaccurate Form 477 data reported by competitive providers in legacy rate-of-return study areas. What follows is just one stark example of Form 477 data that is almost certainly erroneous.

Barrier Communications Corp., d/b/a BarrierFree,⁷ is apparently a fiber and fixed wireless-based competitor in several eastern states. In its June 30, 2017 Form 477 submission, and based on information available to the Concerned Rural LECs, BarrierFree did not report any availability of broadband in the states of Connecticut, Maryland, New Jersey, New York, Pennsylvania, Rhode Island, and Virginia, or the District of Columbia. Then, in its December 31, 2017 Form 477 submission, and based on information available to the Concerned Rural LECs, BarrierFree reported the availability of broadband via fiber and/or fixed wireless to 100% of the census blocks in Connecticut, Maryland, New Jersey, Rhode Island, Virginia, and the District of Columbia. In addition, BarrierFree appears to have reported the availability of broadband via fixed wireless to approximately 97% of the census blocks in Pennsylvania and to approximately 85% of the census blocks in New York. The FCC has yet to release the voice data from the December 31, 2017 Form 477, so it is not certain if BarrierFree is reporting the availability of voice service and would therefore be deemed a qualifying competitor for purposes of an auction. However, BarrierFree's website advertises the availability of voice service, so it is reasonable to conclude that they would report the availability of voice on the Form 477.

One of the Concerned Rural LECs made several attempts to determine the availability of BarrierFree's voice and broadband services in specific locations within their study area.

⁷ The Concerned Rural LECs are aware that the FCC has reviewed BarrierFree's December 31, 2017 Form 477 data as a result of its verification process, and may have required that BarrierFree refile with revised data. However, BarrierFree still serves as a good example of the risk that the Commission takes in relying on Form 477 data without a challenge process. Rate-of-return ILECs have firsthand knowledge of the competitors offering service in their study areas and a challenge process is an effective vehicle through which to share this information with the Commission.

However, BarrierFree’s service availability tool on their website was not functional for an extended period of time and calls to their customer service number went unanswered. In addition, a member of the Concerned Rural LECs whose study area BarrierFree reports to have broadband available via fiber-to-the-home in every single census block reported no activity of fiber overbuilding in the area either in the second half of 2017 or at any time since.

The Concerned Rural LECs also performed additional research to determine if it is likely that BarrierFree has the resources to deploy fiber and fixed wireless services to the vast majority of census blocks in seven states and the District of Columbia, and the results are quite telling. According to the website Buzzfile, BarrierFree “is estimated to generate \$668,847 in annual revenues, and employs approximately 5 people at this single location.”⁸ The Cortera Business Directory indicates that BarrierFree “currently has approximately 1 to 5 employees and annual sales of under \$500,000.”⁹

It is highly improbable, if not outright impossible, that a company with a single-digit number of employees and less than \$1 million in annual revenue could build and operate a multi-state fiber and fixed wireless network. Fortunately, it appears that the Commission has caught BarrierFree’s suspect Form 477 reporting and will require it to resubmit more accurate information in advance of the A-CAM II elections and any future auction for entirely or almost entirely overlapped study areas. However, it is unrealistic to assume that the FCC will detect every instance of incorrect reporting in the Form 477. Had the Commission not caught BarrierFree’s apparently erroneous reporting, it could have led to auctions being conducted for the large majority of legacy rate-of-return study areas in Virginia, Maryland, New York, and

⁸ <http://www.buzzfile.com/business/Barrierfree-SM-631-593-4299>.

⁹ <https://start.cortera.com/company/research/k5p3ptl2s/barrier-communications-corp/>.

Pennsylvania.¹⁰ (And, ironically, BarrierFree would likely not have even been financially and/or technically capable of participating in those very auctions.) This is just one example where competitive providers do not have the resources or understanding of the Form 477 reporting requirements to accurately report the services they provide and the areas they serve.

Moreover, even in rate-of-return study areas where competitive providers have reported their service coverage correctly in the Form 477, that data cannot be relied upon as the sole determinant of 100%, or near 100%, competitive overlap of both broadband and voice service. In the 100% competitive overlap process, the Wireline Competition Bureau's preliminary determinations of study areas subject to 100% overlap assumed that "...if a broadband provider reported any fixed voice connections in a state in its Form 477 filing, then it offered voice service throughout its entire broadband service area in that state."¹¹ This is a far-fetched assumption, as many competitive carriers will offer both voice and broadband in the densely populated urban and suburban areas within a state, but only offer broadband in the rural areas served by rate-of-return ILECs.

It is not reasonable for the Commission to forego a challenge process simply because it may be somewhat time consuming or resource intensive, when the continued availability of high-quality, affordable voice and broadband services in hard-to-serve rural areas is at stake.

Commissioner O'Rielly summed it up very well when he stated:

I do have concerns related to our apparent endorsement of Form 477 data to identify areas of competitive overlap and the decision to forego a challenge process in adopting A-CAM II parameters. While a challenge process can be administratively burdensome and would create delays in implementing the second

¹⁰ These are the states in which BarrierFree claimed the availability of broadband that also include legacy rate-of-return ILECs.

¹¹ *Wireline Competition Bureau Publishes Preliminary Determinations of Rate-of-Return Study Areas 100 Percent Overlapped by Unsubsidized Competitors*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 8179, 8184, para. 15 (2015).

model offer, relying on the Form 477 data is hard to square with our ongoing proceeding on improving our broadband coverage data...Ultimately, a challenge process is not a panacea, but it's better than blindly supporting Form 477 data as is.¹²

The Concerned Rural LECs agree wholeheartedly with Commissioner O'Rielly.

C. The minimum geographic bidding area should be as large as possible

The FCC should not adopt minimum geographic bidding areas in auctions for support in legacy rate-of-return study areas that are smaller than the study area, as doing so creates uneven obligations between the ILEC and any other winning bidders in the auction. While the ILEC will retain its carrier-of-last-resort obligation to offer voice service to all customers throughout the entire study area – even in those portions of the study area where it is not the auction winner – a competitor would have similar obligations only in those areas where it won. A worst case result would be that the incumbent retains support for a very small percentage of the study area, but is legally obligated by the state regulatory authority to offer voice service throughout the entire study area. This places at risk the provision of universal service, particularly in the most remote, hardest-to-serve areas.

That said, if the Commission is to use a census geography for the minimum geographic bidding area, then it should use a larger census designation such as census tracts or CBGs. In the FNPRM, the Commission asks whether it should use census blocks, rather than CBGs, given that there are likely to be fewer total eligible areas in this auction. This is a very telling question. It appears that the FCC is considering a smaller geographic bidding area for this auction only because it believes the administrative burden on the Commission would be manageable. The fact that there are likely to be fewer total eligible areas in this auction than in the CAF Phase II

¹² *December 2018 Rate-of-Return Reform Order and FNPRM*, Statement of Commissioner Michael O' Rielly.

auction should have no bearing on the minimum geographic bidding area that is chosen. The minimum geographic bidding area should be based solely on what will provide the greatest assurance of ongoing high-quality, affordable voice and broadband services to the consumers in these areas.

D. Reserve prices should be based on the ILEC's prior year legacy support as disaggregated by the incumbent

The reserve prices for auctions in entirely or almost entirely overlapped legacy rate-of-return study areas should be set using the ILEC's total legacy support claims in the year prior to the auction, and disaggregated using a methodology selected by the incumbent. It would be entirely inappropriate to base reserve prices on the A-CAM in study areas where the ILEC did not elect the model to determine their high-cost support amount. There are a number of reasons why legacy rate-of-return carriers did not elect A-CAM support, but the primary reason is that in some study areas, the A-CAM does not calculate costs that are reasonably reflective of the actual costs incurred to build and maintain a network. If A-CAM support was not sufficient to provide the incentive for a rate-of-return carrier to elect it, then to cap the support that is available in the auction based on that same model would be punitive. Therefore, reserve prices should be based on the full amount of the incumbent's prior year legacy support claims.

Just as it was years ago when the Commission established the identical support rule, disaggregation is very important in the context of auctions for competitive overlapped study areas. The cost to serve specific geographic bidding areas within the study area will vary drastically, so the Commission must allow ILECs to disaggregate support to ensure that it is allocated correctly. Without the accurate disaggregation of support, the funding assigned to a relatively high density, lower-cost geographic area would likely be more than what is necessary to serve these areas, while the support assigned to a low density, very high-cost geographic area

would likely be insufficient. This would drive competitors – if permitted to bid on less than the entire study area – to only bid on the higher density, lower-cost geographic areas with the hope of winning a windfall of support. Were the incumbent to lose the auction in these lower-cost areas, they would wind up with insufficient support to serve the highest-cost portions of the study area. This would place at risk the continued provision of the supported services to the consumers residing in these areas.

The Commission should provide significant flexibility in how a legacy rate-of-return carrier disaggregates its support and the process should not be administratively burdensome. There are a variety of disaggregation methodologies that will produce reasonably accurate results, but one size will not fit all. The incumbent has the greatest understanding of its costs that determine the legacy support it receives, and should be afforded the opportunity to present a disaggregation plan to the Commission based on a variety of acceptable methodologies.

As suggested in the FNPRM, one disaggregation methodology the incumbent should be permitted to elect is to proportionately allocate their legacy support using the costs for each census block as calculated by the A-CAM. However, because legacy rate-of-return carriers did not elect the A-CAM, for some companies the model may not even be an accurate tool for disaggregation. Therefore, ILECs should have the flexibility to present a different methodology.

In particular, the Commission should look at the methodologies that were adopted in 2001 to disaggregate Interstate Common Line Support (ICLS) for the purpose of making identical support available to competitors.¹³ In 2001, the Commission provided ILECs with multiple paths to disaggregate legacy support, with differing levels of regulatory review and approval. For example, a “Path 3” plan for disaggregation allowed a carrier to certify that it had

¹³ See 47 C.F.R. §54.315 (2011). This rule was eliminated when the Commission eliminated the identical support rule in the *2011 USF/ICC Transformation Order*.

disaggregated support at the wire center level, that it had disaggregated into no more than two cost zones per wire center, or that the disaggregation plan complied with a prior regulatory determination made by the state commission. A Path 3 plan for disaggregation did not require FCC or state commission approval. A “Path 2” plan for disaggregation allowed carriers to propose any method of disaggregation, but required state commission approval. Similar methodologies could be used for the auction for entirely or almost entirely overlapped study areas to provide ILECs with flexibility and limit the administrative burden placed on them.

E. The use of service tiers similar to those used in the CAF Phase II auction is reasonable but the weight assigned to high latency bids should be increased

The Commission’s proposal to accept bids in performance and latency tiers similar to those used in the CAF Phase II auction is reasonable. The weights assigned to the performance tiers in the CAF Phase II auction appropriately account for the value of higher speeds and higher usage allowances that rural customers deserve. However, the weight assigned to high latency bids should be increased so that an even greater preference is given to low latency service. Given the inherent limitations of high latency services, particularly for real-time applications and voice services, high latency providers should have a higher hurdle to clear in order to be a winning bidder in an auction for high-cost support in rate-of-return study areas. Since the FNPRM proposes to eliminate the “minimum” performance tier, the weight for high latency bids could be increased to 45 and still maintain a maximum band of weights that is less than 100.¹⁴

¹⁴ In the *CAF Phase II Auction Report and Order and Order on Reconsideration*, the Commission established a principle that every bidder in the CAF Phase II auction – no matter the service tier or latency – must have the opportunity to exert competitive pricing pressure on every other bidder. This requires that the total band of weights be less than 100. If the Commission adopts the performance tiers and associated weights proposed in the FNPRM, along with a weight of 45 for high latency, a carrier submitting a bid in the “baseline” tier along with high latency would have a total weight of 90 placed on their bid, which is less than 100. *Connect America Fund; ETC Annual Reports and Certifications*; WC Docket Nos. 10-90 and 15-48, 32 FCC Rcd 1624, 1630, para. 22 (2017) (*CAF Phase II Auction Report and Order and Order on Reconsideration*).

F. Eligible participants in an auction should be limited to the ILEC and existing unsubsidized competitors that offer qualifying service in the study area

The FCC should abandon its proposal to allow any eligible provider to bid in the auction, including providers that do not report coverage in the study area being auctioned. While this would likely achieve the Commission's stated goal of having more participants in the auction, it would also create a free-for-all and be unfair to the incumbent. Companies could bid for support in study areas where they have incurred no financial risk, have no facilities, and have limited knowledge of the cost to serve. Only if the provider was a winning bidder in the auction would they then have to invest in the study area, while the incumbent and existing qualifying competitors have already done so, demonstrating their willingness and capability to provide the supported services. Eligibility to participate in an auction should therefore be limited to the incumbent and existing unsubsidized competitors in the study area that are offering voice and broadband services meeting the Commission's current service obligations at the time of the auction (and that submit a complete short-form application). This will provide a greater level of assurance that the winning bidder(s) will be technically and financially capable of meeting their universal service public interest obligations.

The Commission should use a two-stage application process, similar to that used in prior universal service auctions. A short-form application provides a reasonable comfort level that auction participants have the legal, technical and financial qualifications to participate in an auction for universal service support. However, it is vital that the short-form application be sufficiently detailed; otherwise the Commission, the incumbent, and possibly other qualified competitors may incur unnecessary costs and burden associated with a winning bidder that eventually is proven unqualified to be a high-cost USF recipient. The long-form application then involves a more extensive review of a winning bidder's qualifications to receive support. This

process has worked well in prior auctions and remains an appropriate application process for auctions in entirely or almost entirely overlapped legacy rate-of-return study areas.

G. The auction design used in the CAF Phase II auction is appropriate for overlapped legacy study areas and all affected study areas should be auctioned simultaneously

The Commission's proposal to utilize the same auction design for entirely or almost entirely overlapped legacy rate-of-return study areas that was used in the CAF Phase II auction is appropriate. In addition, conducting a single, simultaneous auction for all affected study areas nationwide is the only fair approach. To conduct multiple auctions would advantage or disadvantage individual auction participants. Competitive providers that serve multiple study areas would likely have the opportunity to learn from the experience of earlier auctions and modify their strategy in later auctions. The incumbent carriers would not have this same opportunity. Therefore, the most competitively neutral option is to conduct a single, multi-round, descending clock auction for all affected rate-of-return study areas. However, before conducting the auction, it is critical that the Commission first establish proper procedures for and conduct a robust challenge process. It should also confirm that the short-form application is sufficiently detailed to ensure that bidders are truly qualified to participate in the auction.

H. At a minimum, ILECs should not have their support reduced for areas where a competitor is the winning bidder until the competitors are fully capable of serving all locations in those areas

When an ILEC is not the sole winning bidder in an auction for an entirely or almost entirely overlapped study area, the Commission must be very cautious in how and when it phases down the incumbent's support. If this transition is done too hastily, there is a risk that customers in the area will lose access to the voice and broadband services that the auctioned funding is designed to support. Therefore, at a bare minimum, ILECs should not have their support reduced

for areas where a competitor is the winning bidder until the competitors are fully capable of providing services meeting the relevant performance requirements to which they committed to all locations in the areas where they won.

Rate-of-return ILECs cannot reasonably be held to their broadband deployment and other ETC public interest obligations without the opportunity to fully recover their interstate revenue requirement, which is based upon the legitimate interstate costs incurred in the provision of the supported services. Were rate-of-return ILECs required to continue meeting their ETC public interest obligations while simultaneously having their high-cost support reduced, it would produce an unfunded mandate.

Not only is it critical that the ILEC be provided an opportunity to recover its interstate revenue requirement each year until the winning competitors are able to offer the required services to all locations in the areas where they won, it is also vital that the incumbent be provided sufficient support to recover the costs of network investments that were made to meet public interest obligations that existed prior to the auction. Many of these investments were made before the concept of competitive overlap was introduced by the Commission. Moreover, investments that were made following the introduction of competitive overlap were made to comply with both long standing carrier-of-last-resort obligations imposed by states as well as more recent broadband deployment obligations established by the Commission. These are investments that cannot be unmade and cannot be used for other purposes; they are truly sunk investments.

Consequently, the Commission should establish a transition that allows rate-of-return ILECs to recover the entirety of their network investment costs that were incurred prior to the auction. To do otherwise would place ILECs in a Catch-22 where they must invest in facilities

in order to comply with deployment obligations imposed by the FCC, but which would potentially be funded for a mere fraction of their economic life. This would be inconsistent with the tenets of rate-of-return regulation, while providing a disincentive for other rate-of-return ILECs to continue investing in their networks to the greatest extent possible, as that investment could be placed at risk in a future auction for overlapped study areas.

In addition, the Commission should not include HCLS in auctions for support in entirely or almost entirely overlapped legacy study areas. HCLS is a key component in legacy rate-of-return ILECs' recovery of their intrastate revenue requirement, and absent this support, they will struggle to meet their state mandated carrier-of-last-resort obligations for voice services. While the Commission may alleviate an incumbent's obligation to provide broadband in areas where a competitor wins the auction for support, there is no guarantee that states will do the same for voice service. This disconnect could result in the ILEC retaining an obligation to provide regulated voice service throughout the study area with insufficient funding available to recover the cost of doing so. It would be unrealistic to assume that all states will replace this lost federal funding. The Commission appears to have recognized this in the *2016 Rate-of-Return Reform Order*, in which it determined that only Connect America Fund Broadband Loop Support (CAF BLS), and not HCLS, would be reduced in areas served by a qualifying competitor.¹⁵

Therefore, the Commission should limit the reduction of support to CAF BLS and establish a transitional timeline that is consistent with the remaining economic life of the assets used to provision service in those areas. At a minimum, the reduction of support should not

¹⁵ *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*; WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92; Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3139, para. 136 (2016) (*2016 Rate-of-Return Reform Order*).

commence until the winning competitors have demonstrated the capability to provide services meeting the relevant performance requirements to all locations within the areas where they won. Anything less puts rural consumers at risk of losing access to universal voice and broadband service due to insufficient funding for the incumbent.

Finally, the FCC should not reduce support for ILECs that do not apply to participate in an auction in which no competitor applies to participate or bids. Similarly, if the ILEC is the sole applicant to bid in its study area, and no other carriers apply to bid, the incumbent should continue to receive support pursuant to the legacy rate-of-return support mechanisms. The Commission would be correct to infer that by not applying to participate in an auction, competitors are demonstrating that they are not capable of providing service to the entire study area. More specifically, the lack of participation by any competitors in an auction is a clear signal that the study area, or any portion thereof, cannot be served ubiquitously with service meeting the Commission's public interest obligations for an amount of support that is less than what the ILEC currently receives. Therefore, an ILEC should not be forced off of the legacy support mechanisms or have their support reduced in any manner when there is an auction in which no competitors are interested or capable of providing universal service. To do so would only threaten the provision of universal service throughout the study area.

I. Auctions for overlapped study areas should be conducted every 7 to 10 years at most

Auctions for entirely or almost entirely overlapped legacy rate-of-return study areas should be conducted very infrequently due to the uncertainty that they create. Rate-of-return ILECs require reasonable certainty that the investments they are making in support of their obligations as an ETC and carrier of last resort will be recovered. These are investments that take many years to recover through a combination of rates and universal service funding. If

auctions are conducted too frequently, then carriers will have a disincentive to invest in their networks to the greatest extent possible due to the risk of losing support before those investments can be recovered. Thus, auctions for entirely or almost entirely overlapped areas should be conducted no more frequently than every seven years,¹⁶ and more appropriately every 10 years or longer. Even a 7 to 10-year interval does not allow carriers to recover the full cost of network facilities, which often have average economic lives of 15 to 25 years in total, and that assumes the investments are made at the beginning of the window.

III. CONVERSION OF LINES TO BROADBAND-ONLY

A. The Commission should not place any constraints on the conversion of broadband-only lines

The Commission should not adopt limits on the number of converted lines for which a rate-of-return ILEC may seek broadband-only support in a given year. Rural consumers want the option to purchase broadband-only lines from their local exchange carrier and rate-of-return ILECs now have a high-cost funding mechanism that makes this offering viable. When rate-of-return carriers offer broadband-only lines in a meaningful way, through effective promotion and attractive pricing, the market has shown that a significant number of customers will subscribe. However, this transition will not occur at the same pace for all rate-of-return carriers, due to the varying demographics of their customer bases.

Rate-of-return ILECs that serve bedroom communities to metropolitan areas have customer bases with a large percentage of Millennials. These carriers are likely to immediately see high broadband-only adoption rates as many of their customers did not grow up with legacy landline voice service. On the other hand, rate-of-return carriers that serve more rural areas with

¹⁶ A seven-year interval is consistent with the frequency of the competitive overlap challenge process adopted in the *2016 Rate-of-Return Reform Order*. *Id.*, 31 FCC Rcd 3139, para. 137.

greater numbers of Generation Xers, Baby Boomers, and older generations, most of whom grew up with legacy landline voice service, are more likely to see somewhat slower adoption of broadband-only lines. Thus, a one-size-fits-all limitation on the number of broadband-only line conversions that individual companies may seek support for in a given year would fail to account for the variation in consumer adoption rates that rate-of-return study areas will experience.

The Concerned Rural LECs are aware that other parties have informally suggested placing limits on the percentage of prior year connections, or even voice lines, that a company may seek broadband-only support for in a given year. While we understand the intent behind this proposal is to limit the potential for, or impact of, a Budget Control Mechanism (BCM) due to the greater amount of CAF BLS received on broadband-only lines, we are concerned about the effect it is likely to have on some rate-of-return carriers' ability to meet customer demands. Rather than seeking to meet customer demand for broadband-only lines, companies would be forced to artificially constrain customer conversions in order to ensure that the conversion limit is not exceeded and they retain sufficient support for all of their lines. The Commission adopted CAF BLS to provide support for the cost of broadband-only loops so that the offering of broadband-only lines is viable for rate-of-return carriers and affordable for their customers. To now artificially cap the number of broadband-only conversions that will be supported per year would be inconsistent with the demands of the marketplace.

If the Commission does decide to place a limit on the number of converted lines that a company can obtain broadband-only support for in a given year, then this limitation should be set as high as possible, calculated as a percentage of total prior year connections, and established as an industry-wide rather than an individual company limit. The Concerned Rural LECs are aware that other parties have analyzed various limitations on broadband-only conversions, including

5% and 10% (as well as others), and believe that a 10% limitation is more appropriate than 5%. If the Commission were to apply a 5% limitation to individual companies, it could take 20 years or longer for a carrier that newly offers broadband-only service to convert all of its lines. Even this depends on the basis against which the limitation is applied. If the limitation is applied to prior year voice lines, as some have discussed, then a company would never be able to reach full conversion, as each year's conversion to broadband-only would result in a diminishing base against which the 5% is applied. Even a 10% annual limitation would likely result in broadband-only line conversions lagging well behind the actual market demand for broadband-only, at least initially.

In addition, any limit on the number of broadband-only line conversions that will be supported per year should be applied to rate-of-return ILECs in total, rather than on individual companies. Doing so would set a maximum number of supported conversions for the rate-of-return industry, allowing for individual companies to convert lines at different paces and potentially receive their full, uncapped CAF BLS for all converted lines. Absent such an approach, the rate-of-return industry as a whole may never reach the maximum allowable conversions in a given year. For example, if the maximum number of supported conversions was set at 10% per company, if one company converted less than 10% of its lines to broadband-only in a given year, the entire industry would also convert less than 10% in that year. By setting the limit at the industry level, it is more likely that the maximum allowable number of lines would be converted to broadband-only and receive the full CAF BLS that the Commission intended.¹⁷ This provides the greatest incentive to rate-of-return carriers to offer broadband-only lines in a meaningful way to meet customer demand.

¹⁷ If the FCC were to establish a per-company limit on the number of supported broadband-only line conversions, it should be a "soft cap" that allows the limit to fluctuate annually in order to utilize all available funding. For

Finally, it should be noted that companies that are now offering broadband-only lines in a meaningful way are starting to win back former customers and, in some cases, are acquiring new customers they have never served. These customers should not be treated as conversions, as they are not existing customers that are otherwise being supported through high-cost support for voice service. The FCC established a support mechanism that allows rate-of-return ILECs to viably offer broadband-only lines that consumers desire. The Commission should not stunt the progress that this support mechanism has engendered through limitations on support for broadband-only line conversions.

B. HCLS associated with broadband-only lines should be permitted to phase out naturally

The FNPRM asks whether the HCLS associated with converted broadband-only lines should be eliminated immediately. It raises this question because HCLS is based on costs that were incurred two years prior to the support payments, which means lines that are converted to broadband-only will receive both HCLS and CAF BLS – Broadband-Only for a period of time. The Commission should keep in mind, however, that the implications are reversed when a line converts from broadband-only to voice or voice/broadband. If the same line were to convert from broadband-only to voice (or voice/broadband) due to changes in customer preferences or a new customer at that location, that line would not receive HCLS for two years due to the fact that the associated costs would not have been recognized as being voice-related in the preceding two years. In this scenario, would the Commission provide immediate HCLS for these converted lines? The rules for HCLS are unique and do not parallel the rules for CAF BLS. Therefore, the

example, the Commission could start with a 10% limit on the number of converted lines for which an individual carrier may seek broadband-only support in a given year. However, if the number of line conversions for the rate-of-return industry as a whole was less than 10%, then carriers that converted more than 10% of their lines to broadband-only could receive support for some or all of those additional conversions, up until the point that it would effectuate or increase the BCM.

Commission should just allow HCLS to phase out naturally for lines that convert to broadband-only. It should not be immediately eliminated.

C. The CAF ICC support rules should not be adjusted for broadband-only lines

CAF ICC support is based on the costs associated with local switching and transport in 2011 and has been phasing down by 5% per year since. These are costs that are primarily driven by investments in local switching equipment and fiber transport networks, which are not eliminated when a customer converts their line from voice or voice/broadband to broadband-only. The local switch and the transport fiber still exist and are used in the provision of voice service to the remaining voice customers, which must be offered in order for the ILEC to maintain its ETC designation.¹⁸ While customers are not required to subscribe to voice service, the ILEC ETC must offer it and doing so requires the facilities that are supported by the CAF ICC support mechanism. If the facilities must remain in service, then the support should also remain.

In the FNPRM, the Commission recognized that, “the rules generally require carriers to impute an amount on broadband-only lines equal to the [Access Recovery Charges (ARCs)] they would have assessed on voice and voice/broadband access lines.”¹⁹ If broadband-only lines are expected to contribute to rate-of-return carriers’ Eligible Recovery, then it seems the Commission also believes that the costs of local switching and transport will remain regardless of the conversion to broadband-only lines. Consequently, it would be inappropriate to adjust the CAF ICC support that a carrier receives when it converts a line from voice or voice/broadband to broadband-only or to otherwise impute revenues from other broadband services. This includes

¹⁸ 47 C.F.R. §54.101(b). “An eligible telecommunications carrier eligible to receive high-cost support must offer voice telephone service...in order to receive federal universal service support.”

¹⁹ *December 2018 Rate-of-Return Reform Order and FNPRM*, para. 204.

interconnected VoIP services, which the customer can purchase from any VoIP provider of their choosing. Doing so would eliminate support that carriers are receiving for costs already incurred and that are not eliminated through the provision of broadband-only lines.

IV. CONCLUSION

For the reasons discussed above, the FCC should adopt the following rules and policies with respect to an auction for competitive overlapped legacy rate-of-return study areas and the conversion of lines to broadband-only:

Auction for Entirely or Almost Entirely Overlapped Areas

- Award support through competitive bidding only in legacy rate-of-return study areas that are *entirely* overlapped by qualifying unsubsidized competitors – i.e., 100% overlap.
- Conduct a challenge process before finalizing the determination of study areas that are entirely or almost entirely overlapped by qualifying competitors.
- Adopt a large minimum geographic bidding area. The entire study area is most appropriate but, at a minimum, census tracts or CBGs should be used.
- Establish reserve prices based on the legacy support received by the ILEC in the year prior to the auction, and disaggregated using a methodology selected by the incumbent.
- Utilize service tiers similar to those used in the CAF Phase II auction, but increase the weight assigned to high latency bids.
- Limit eligible participants in the auction to the incumbent and existing unsubsidized competitors offering qualifying service in the study area.
- Utilize the same auction design that was used in the CAF Phase II auction, with all affected study areas auctioned simultaneously.
- For study areas where the incumbent is not the sole winning bidder, establish a support transition that allows the ILEC to recover the entirety of their network investment costs that were incurred prior to the auction. At the very least, do not reduce the ILEC's support until competitors are fully capable of providing the required services to all locations in areas where they won.

- Conduct auctions very infrequently, at an interval that is consistent with the average service life of the facilities that are being supported, and at most every 7 to 10 years.

Conversion of Lines to Broadband-Only

- Allow consumer demand to determine the pace that lines are converted to broadband-only. Do not adopt limits on the number of converted lines for which rate-of-return ILECs may seek broadband-only support in a given year.
- Allow HCLS associated with broadband-only lines to phase out naturally. Do not immediately eliminate HCLS for lines converted to broadband-only.
- Do not adjust the amount of CAF ICC support a rate-of-return ILEC receives for lines converted to broadband-only.

Respectfully Submitted,

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APPENDIX A: The Concerned Rural LECs

3 Rivers Communications	Nortex Communications
ACI/Pathway Com-Tel (Alenco)	North Texas Telephone Company
ATC Communications (Albion)	Northwestern Indiana Telephone Company
Beaver Creek Cooperative Telephone Company	Oklatel Communications, Inc.
Blanca Networks	Panhandle Telephone Cooperative, Inc.
Calaveras Telephone Company	Penasco Valley Telephone Cooperative, Inc.
Canby Telephone Association	People's Telephone Company
Cap Rock Telephone	Peoples Telephone Coop
Chariton Valley Telephone Corporation	Phillips County Telephone Co., d/b/a PC Telcom
Chickasaw Telephone Company	Pigeon Telephone Company
Citizens Telephone	Plateau Telecommunications
Custer Telephone Cooperative, Inc.	Prairie Grove Telephone Co.
Direct Communications Cedar Valley, LLC	Rico Telephone, Inc.
Direct Communications Rockland, Inc.	Rochester Telephone Company
Ducor Telephone Company	Santa Rosa Telephone Cooperative
Eagle Telephone System, Inc.	Scio Mutual Telephone
ENMR Telephone Cooperative	Siskiyou Telephone
Farmers Mutual Telephone Company	Star Telephone Company, Inc.
Filer Mutual Telephone Company	Stayton Cooperative Telephone Company
Foresthill Telephone Company	ToledoTel
Granite State Communications	Totelcom Communications
Guadalupe Valley Telephone Cooperative	Volcano Telephone Company
Hat Island Telephone Company	West Texas Rural Telephone Cooperative
Home Telephone	Wheat State Telephone, Inc.
InterBel Telephone Cooperative, Inc.	Whidbey Telephone Company
Kerman Telephone Company	Wiggins Telephone Cooperative
Midvale Telephone	
Molalla Communications Company	
Nemont Telephone Cooperative, Inc.	
Nex-Tech	