BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 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 Rate for Local Exchange Carriers	))	WC Docket No. 07-135
	)	
Developing a Unified Intercarrier Compensation Regime	))	CC Docket No. 01-92

REPLY COMMENTS OF USTELECOM

Pursuant to the Further Notice of Proposed Rulemaking adopted in conjunction with the Report and Order, FNPRM, and Order on Reconsideration in the above-referenced proceeding (collectively, *2018 Rate-of-Return Budget Order and FNPRM),*[1] USTelecom – The Broadband Association[2] respectfully submits these reply comments responding to the Commission's request for comment on further reforms to the rate-of-return high cost program.[3]

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[1] See In the Matter of Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rate for Local Exchange Carriers, Developing a Unified Intercarrier Compensation Regime, WC Docket Nos. 10-90, 14-58 07-135 and CC Docket No. 01-92, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18-176 (Dec. 12, 2018) (*Rate-of-Return Budget Order and FNPRM*).

[2] USTelecom is the nation's leading trade association representing service providers and suppliers for the broadband innovation industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications and broadband services to hundreds of millions of customers around the world.

[3] *See Rate-of-Return Budget Order and FNPRM* at 3, para 3.

I. AUCTION FOR OVERLAPPED AREAS

Although the Commission determined that areas with 100 percent or near 100 percent overlap should be subject to auction,[4] USTelecom and nearly all other commenters agree that it is inappropriate for the Commission to use a reverse auction in the case of overlapped areas or that the auction *as proposed* is appropriate.[5] Many of the commenters noted the same concerns USTelecom shared in its initial comments: that the FCC should use extreme caution in removing support from carriers that have made prior investments with the expectation of support.[6] As FWA aptly points out, "incumbent providers have built networks and incurred costs to serve their entire study areas which includes the most sparsely populated and highest cost areas."[7] Providers plan for the long-term when making their investments in broadband, and if the carriers are concerned that in three to five years support will be removed based on what a competitor says they cover, companies will not include future support in their economic analysis because the risk will be too high.

The danger here is that ultimately this will reduce the value of Universal Service Fund (USF) dollars in spurring broadband investment. NTCA points out that "[rural providers] working hard to improve and extend service in their difficult-to-serve rural communities (especially those subject to buildout mandates) should not be forced to constantly divert resources to fending off other carriers' claims of service coverage or to worry about 'the rug being pulled out' from prior investments in a way that other USF recipients do not."[8] As we have stated before in this proceeding, this overlap calculation is essential to the rural broadband

[4] *See Rate-of-Return Budget Order and FNPRM* at 43, para 143.
[5] *See* Comments of NTCA at 2-14, Comments of WTA at 2-16, Comments of ITTA at 3-13, Comments of Concerned Rural LECs at 3-17, Comments of FWA at 4-5, Comments of TCA at 2-7, WC Docket Nos. 10-90, 14-58, 07-135 and CC Docket No. 01-92 (Mar. 8, 2019).
[6] *See e.g.*, Comments of FWA at 4-5; Comments of NCTA at 14.
[7] *See* Comments of FWA at 4.
[8] *See* Comments of NTCA at 14.

providers providing service because they need to be able to predict where they will receive support and be sure that the support will not disappear at some undetermined time.[9] The Commission should act with extreme caution before taking this route.

The primary reason commenters object to the auction as proposed is because it does not contain a challenge process.[10] In fact, no commenter opposes use of a challenge process including those that support an auction and call for the Commission to implement the same auction procedures used for the CAF II auction.[11] There is overwhelming support for conducting a challenge process to verify the accuracy of the data in the affected study areas because there is general agreement that there is clear and significant evidence already in the record that 477 data is flawed.[12] Not only is there record evidence in this proceeding, but in the Modernizing the FCC Form 477 Program proceeding some of the same parties - WISPA and ITTA - have joined with USTelecom and its members and others in support of a proposal[13] to improve the current method of FCC Form 477 data collection process to improve its reliability for this, and other purposes.[14] All evidence points to the need to improve data so that there is real clarity about where providers provide service and moving ahead with a plan to remove support based on insufficiently granular FCC Form 477 data without a challenge process or without an adequate

[9] *See* Comments of USTelecom, WC Docket Nos. 10-90, 14-58 07-135 and CC Docket No. 01-92 at 11-12 (May 25, 2018).

[10] *See* Comments of NTCA at 2-10, Comments of WTA at 14-15, Comments of ITTA at 4-5, Comments of Concerned Rural LECs at 4-9, Comments of FWA at 5, Comments of TCA at 2-4, Comments of Vantage Point Solutions at 15,WC Docket Nos. 10-90, 14-58, 07-135 and CC Docket No. 01-92 (Mar. 8, 2019).

[11] *See e.g.*, Comments of NCTA – The Internet & Television Association, Comments of WISPA, and Comments of ADTRAN, Inc. WC Docket Nos. 10-90, 14-58, 07-135 and CC Docket No. 01-92 (Mar. 8, 2019).

[12] *See* Comments of NTCA at 2-10, Comments of WTA at 15-16, Comments of ITTA at 4-5, Comments of Concerned Rural LECs at 6-9, Comments of FWA at 5, Comments of TCA at 2-4, Comments of Vantage Point Solutions at 2-15, WC Docket Nos. 10-90, 14-58, 07-135 and CC Docket No. 01-92 (Mar. 8, 2019); *Rate-of-Return Budget Order and FNPRM* at 53, para 185.

[13] *See* Letter of B. Lynn Follansbee, VP–Law & Policy, USTelecom to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 11-10, (Mar. 21, 2019).

[14] *In the Matter of the Modernizing the FCC Form 477 Data Program,* Further Notice of Proposed Rulemaking 32 FCC Rcd 6329, 6342 (Aug. 3, 2017).

transition is counterintuitive to the predictability the Commission has attempted to achieve in both is 2016 and 2018 Orders.[15]

USTelecom continues to support the Commission instituting the challenge process already adopted in the rules on a limited set of companies, such as those who are predominantly served by an unsubsidized competitor as reported on FCC Form 477. This would be a more manageable subset of companies and the Commission will not have to deal with all the new issues involved with a reverse auction where an incumbent has already deployed a robust broadband network.

USTelecom also agrees with ITTA[16] that should the Commission move ahead with auctioning any of these areas any new entrant into the market receiving USF support should have Carrier of Last Resort (COLR) obligations so as to avoid the situation where a competitor is picking and choosing their customers. Currently, competitors can choose not to provide service to small businesses right off an incumbent's fiber because it is not profitable. A competitor should not be allowed to claim that it could provide service and eliminate a competitors' support if it does not intend to provide service on rates and terms comparable to the incumbent.

II. CONVERSION OF BROADBAND ONLY LINES

With respect to the conversion of broadband only lines (CBOL) nearly all commenters agree that the Commission should adopt some sort of transitional measures that will promote continued consumer-driven adoption of standalone broadband services while minimizing any unpredictability created by imposition of budget controls.[17] USTelecom maintains its support for

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[15] *See Connect 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 at 3097 (*2016 Rate-of-Return Reform Order*); *Rate-of-Return Budget Order and FNPRM* at 26, para 78.
[16] *See* Comments of ITTA at 8.
[17] *See e.g.* Comments of NTCA at 14-21, Comments of WTA at 16-22, Comments of ITTA at 14-15, Comments of Triangle Telephone Coop at 3-5, Comments of TCA at 7.

its proposal that locks in CBOL conversions done prior to December 31, 2018, and allows each company to recover based on a CBOL count no higher than the December 31, 2018 count plus ten percent of total voice and broadband lines annually and allows CBOL lines in excess of the limit to be treated as voice/data for USF purposes. Additionally, USTelecom supports the concept that if the industry as a whole, including those companies that exceeded the ten percent cap, produced a CAF-BLS demand that did not create (or increase) the Budget Control Mechanism (BCM), those companies could get funding for the lines that exceeded ten percent and that this limit should be imposed on a statewide basis. Other proposals in the record are nearly identical to this or contain some form of these concepts while others aren't sure what steps should be taken but still agree that some measures are necessary.[18]

Most of the entities that oppose any sort of control on CBOLs fail to note that a loop can move from voice/data to data only, and back and forth depending upon the customer's choice of service. It is important to remember that these sorts of conversions are not always something that is within a carrier's control and consumer choice should not serve as a penalty to the carrier. For example, Midwest Carriers and ADTRAN say that the Commission should only act retroactively to cure a situation where there are abuses such as a carrier found to be artificially converting customers to broadband only lines.[19] Midwest argues that if all carriers convert lines according to NECA guidelines there should be no problem.[20] This not only blindly ignores the trends towards consumers seeking broadband-only service at rapid rate, it could also allow for potential destabilization of the budget creating the unpredictability that the Commission has previously found desirable for investment purposes.[21] Even the Concerned Rural LECs who

[18] *See* Comments of FWA at 8.
[19] *See* Comments of Midwest Carriers at 3 and Comments of ADTRAN, Inc. at 4.
[20] *See* Comments of Midwest Carriers at 3.
[21] *See 2016 Rate-of-Return Reform Order* at 3097.

argue against a one-size-fits-all limitation on the number of broadband-only line conversions acknowledge that conversions by their nature are not within the provider's control, noting that doing so fails to account for the variation in consumer adoption rates that rate-of-return study areas will experience.[22]

With the adoption of the *2018 Rate-of-Return Report Budget Order and FNPRM*, broadband providers have finally gained some additional ability to predict their level of support as well as assess the current demand on the fund. USTelecom's proposal, and others in the record in varying degrees, seek to help guarantee that the budget will not be exceeded for some time to come, giving carriers added predictability as provided for in the Telecom Act. Despite their overall opposition to a CBOL limit, the Concerned Rural LECs note that they understand that the intent behind this proposal is to limit the potential for, or impact of, a BCM, but that they are concerned about the effect it is likely to have on some rate-of-return carriers' ability to meet customer demands.[23] USTelecom and others are not arguing for any company to be prohibited from converting customers to broadband only lines, only that they would hold the reporting of those lines as converted in abeyance *temporarily* so that the impact on the budget is spread out over time. In this way, a transition in reporting allows consumers demands to be met, but also serves the dual purpose of protecting the overall rate-of-return budget.

The Concerned LECs alternative plan is in line with USTelecom's proposal of limiting ten percent of prior year lines and they also acknowledge that this plan would lag behind the actual market *only in the beginning*.[24] Precisely because we only view this budget concern as a temporary problem, USTelecom supports NTCA's proposal that this transition be limited and

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[22] *See* Comments of Concerned LECs, WC Docket Nos. 10-90, 14-58, 07-135 and CC Docket No. 01-92 (Mar. 8, 2019) at 18-19.
[23] *See Id.* at 19.
[24] *See Id.* at 20.

end in 2024.[25] We agree with NTCA that it is wise in this instance for the Commission "to 'think ahead' as to the sustainability of the increased budget resources it has just provided and to identify ways of minimizing the likelihood of a reintroduced budget control if at all possible."[26] USTelecom is in complete agreement that no rural LEC wants to go through another period of uncertainty like the one that resulted from the BCM escalating from a 12.3 to 15.5 percent in a single year. We believe that setting a temporary transition on CBOLs is a simple measure to avoid upsetting the excellent policymaking that took place in recalibrating the budget in the *2018 Rate-of-Return Budget Order and FNPRM*.

USTelecom is fully supportive of the Commission's efforts to streamline and encourage additional efficiencies in the elements of the USF program raised in this Further Notice. However, we also urge the Commission to act in a considered fashion noting that changes to how support is allocated and how the budget is implemented should be consistent with the Commission's policy goals, and done prudently so that there is continued certainty, stability, and predictable support.

Respectfully submitted,

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[25] *See* Comments of NTCA at 17.
[26] *See Id.* at 15.