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

REPLY COMMENTS OF JSI

JSI[1] 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 transitioning rate-of-return study areas that receive legacy Universal Service Fund support ("USF") that are over a certain percentage overlapped by an unsubsidized competitive provider to a reverse auction methodology.[2] JSI supports the multiple commenters who oppose the use of a reverse auction methodology like the one used in the Connect America Fund ("CAF") Phase II Auction 903, or any type of reverse auction methodology, in existing rate-of-return study areas.[3] JSI agrees with WTA – Advocates for Broadband ("WTA"), that even if a rate-of-return carrier is overlapped significantly by an

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[1] JSI is a consulting firm with over 50 years of experience in the communications industry. It provides management, accounting and technical support to hundreds of clients in the nation. Most of these clients are rural incumbent local exchange carriers ("RLECs") or their affiliates that offer service in rural areas of the nation.

[2] *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*").

[3] *See* Comments of ITTA – The Voice of America's Broadband Providers, at 2; Comments of USTelecom ("USTelecom Comments"), at 3; Comments of WTA – Advocates for Rural Broadband ("WTA Comments"), at 2; Comments of FWA, Inc., at 4; Comments of TCA, Inc., at 5; WC Docket No 10-90, et. al., filed March 8, 2019.

unsubsidized competitor, a reverse auction mechanism is not appropriate for areas where the rate-of-return broadband provider has existing customers, services, networks, and investment obligations.[4]

This is especially true given that the reverse auction mechanism, if implemented as proposed, would (1) rely solely on inaccurate and incomplete FCC Form 477 data that would not show the extent of actual "overlapping" and comparable service in the affected study areas;[5] (2) lack a transition plan that would allow existing carriers that lose support to retain employees and continue to deliver existing services until the auction winner is ready to provide service; [6] and (3) not occur concurrently with rate-of-return carrier's decision to remain on legacy support or elect the second offer of Alternative Connect America Model ("A-CAM II") support. Additionally, the proposed reverse auction mechanism does not account for allowing existing carriers to repay any outstanding loans, that were taken out during a time when the provider was estimating legacy USF support for a set number of years, to build the broadband facilities in the first place.[7] In short, JSI urges the FCC to exercise caution when considering the possibility of removing support from carriers that have made prior investments with the expectation of future support.

I. <u>The FCC Should Not Phase Out Existing Support</u>

JSI agrees with comments filed by USTelecom which state that "many carriers in rural America have taken out loans and made investments to serve their communities."[8] As the Commission contemplates how to phase out existing support in areas where it is demonstrated that competition exists at the 99 percent or greater level, the Commission should recognize that

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[4] *See* WTA Comments, at 2.
[5] *See* Comments of Vantage Point Solutions, WC Docket No 10-90, et. al., filed March 8, 2019, at 2.
[6] *See* Comments of The Concerned Rural LECs at 15 and Reply Comments of WTA – Advocates for Rural Broadband, at Summary Page ii.
[7] *See* USTelecom Comments, at 3.
[8] *Id.,* at 3.

existing High-Cost Loop Support ("HCLS") is being provided to carriers for investments that have ***already*** been placed into service. In many instances these assets are financed through loans that are being paid down through a long-term (20+ year) schedule. Since incumbent carriers made investment decisions in the past recognizing that their investments would qualify for federal USF with the programs then in place, JSI recommends the Commission not eliminate these federal support mechanisms ***unless and until*** the carrier has been able to recover the investments made and recover ongoing maintenance and expense obligations for such infrastructure.

The FCC should not phase out existing support, but if it does, the decision should be made for any future investments and not for existing investments that are in the process of being recovered. USTelecom suggests "setting a transition for the remaining life of the assets in service."[9] JSI urges the Commission to take this reasonable and administratively efficient way to provide support for existing infrastructure while prohibiting future support for new infrastructure placed in service. Such a method could be accomplished by requiring carriers to identify new assets though normal and customary accounting procedures.

II. The FCC Should Consider Timing With the A-CAM II Offer

If the FCC decides to implement a reverse auction mechanism, JSI strongly urges the FCC to decide as soon as possible so that existing carriers may have sufficient time to understand any proposed legacy support changes prior to the closing of the A-CAM II offer. Without disclosing the proposed changes to legacy support and finalizing the reverse auction mechanism, carriers would be unable to determine what is best for their investments and deployment decisions, and what is in the best interest for end-user customers.

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[9] *Id.*, at 4.

Rate-of-return carriers should be given enough time and <u>all</u> relevant information to make an educated decision between legacy and A-CAM II. The changes to legacy USF proposed in the *FNPRM* are not only relevant, in some cases the proposed changes can be the deciding factor whether to remain on legacy support or elect A-CAM II, especially for carriers whose legacy support is greater than A-CAM II support. Without knowing the details as to how this overlap policy will eventually operate, these "glide path" carriers may decide that it is in the best interest of their customers and the rural communities that they serve to remain on legacy support only to have their legacy support significantly reduced or entirely phased out through a reverse auction process.

Further, there are many unknowns which must be addressed before carriers can determine whether they will be impacted by the proposed changes. For example, legacy carriers must know how a reverse auction mechanism will ensure that only accurate broadband deployment data is used. It is widely known that the current Form 477 data is flawed or incomplete and often does not capture the real broadband deployment situation of a census block. The Form 477 data issue has been brought to the Commission's attention in this proceeding and others, and these flaws must be corrected before the FCC can accurately determine if a rate-of-return carrier is in fact overlapped by an unsubsidized competitor to the extent necessary to trigger the auction.

If the FCC fails to timely disclose the proposed changes to legacy USF, legacy rate-of-return carriers will be forced to make this vital decision by taking their best guess as to what the FCC might ultimately decide—certainly not the way to make any decision, especially one with such major consequences.

III. Conclusion

The public interest is served by preserving the continuity of existing USF programs for the life of existing assets that were purchased in part with the USF support. Without assurances that infrastructure investments in high-cost and remote areas of the nation will be supported during the life of the asset, carriers will face uncertainty in making investment decisions, and may delay indefinitely the future investment of infrastructure needed to deploy advanced telecommunications capabilities in portions of their service areas. The ability to rely on a stable federal support program has served the nation well in the past and JSI suggests that in instances where the Commission seeks to move in an untested direction, it ensure that prior investments are recoverable under the policies that were used to encourage such investments. Furthermore, rate-of-return carriers that are currently on legacy support awaiting the FCC to release the A-CAM II offer and revised legacy five-year plan should be able to evaluate both options at the same time – which means the FCC either should delay the A-CAM II offer until the reverse auction mechanism is finalized, or speed up the reverse auction rulemaking.

Respectfully submitted,

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