

**Before the  
Federal Communication Commission  
Washington D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for	)	WC Docket No. 07-135
Local Exchange Carriers	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation	)	

## **Comments of TCA**

### **I. Introduction**

On March 23, 2018, the FCC released a Notice of Proposed Rulemaking seeking comment on several issues related to the Universal Service Fund High Cost Program (“HCP” or “USF”) for rate of return LECs (“RLECs”) receiving support through the Alternative Connect America Model (“ACAM”) or through cost-based recovery mechanisms.<sup>1</sup> TCA sincerely appreciates the opportunity to comment on these important issues. As explained more fully below, TCA supports:

1) establishing a long-term budget for cost-based RLECs that is sufficient for future demands to meet the principles of universal service, 2) fully funding all current programs and mechanisms before making a second model offer more broadly available, 3) focusing on fully funding existing cost-based mechanisms rather than establishing a threshold level of support for cost-based RLECs,

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<sup>1</sup> *Connect America Fund et al.*, WC Docket 10-90, *et al.*, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking (rel. March 23, 2018) (“NPRM” or “Order” as appropriate).

and 4) retaining the existing 100% competitive overlap process, which is working as intended. TCA opposes FCC proposals that would: 1) lower the per line limit on support, and 2) adopt means testing for consumers in the HCP.

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

## **II. The FCC should establish a long-term HCP budget sufficient to meet the principles of Universal Service**

As TCA has advocated multiple times,<sup>2</sup> any long-term budget set by the FCC for the HCP must enable compliance with the goals established by Congress that *all* Americans should have access to reasonably comparable voice and advanced communications services at reasonably comparable rates.<sup>3</sup> TCA recommends that the FCC should first evaluate the future needs of the fund, and then establish a budget. The FCC’s current practice of adhering to an arbitrary budget and then retroactively funding the shortfalls does not provide the certainty that this critical program requires. The HCP provides support for infrastructure deployment and operation in the highest cost areas of the country. It is foundational to the success of the mission for USF and all the other programs would not be effective in their goals without the networks supported by the HCP. Therefore, it is not enough to simply establish an arbitrary budget number and “hope for the best.”

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<sup>2</sup> For example, Connect America Fund, WC Docket 10-90, Comments of TCA. (filed February 13, 2017).

<sup>3</sup> 47 USC §254(b)(3).

Instead, the FCC must perform rigorous analysis of what the program will require to meet the goals it itself has established.<sup>4</sup>

The FCC first established a budget of \$2 billion for rate of return carriers in its USF/ICC Transformation Order.<sup>5</sup> At the time, the FCC did not impose specific broadband deployment obligations on RLECs and only loops used in the provision of voice services were eligible for support. In 2016, the FCC adopted significant changes to its mechanisms, allowing support for broadband-only services for the first time and imposing specific broadband deployment obligations for RLECs.<sup>6</sup> However, the FCC did not evaluate whether its budget was sufficient to support the obligations it was imposing or the new support streams it was creating. In fact, analysis run by the industry has repeatedly shown that the budget was grossly insufficient for its purposes.<sup>7</sup> Therefore, the arbitrary budget established seven years ago is clearly not the right place to start.<sup>8</sup>

To be clear, TCA supports the FCC's proposal to include an inflationary factor to the budget to keep up with increasing costs in the future. However, the inflationary increase should be

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<sup>4</sup> For instance, a simple trending of shortfalls show that if the average year over year constraint continues as it has since 2016, the size of the rate of return budget (including ACAM, CAF ICC, AK Plan, CAF BLS, and HCLS) will need to be nearly \$4.06 billion to meet program demands. Therefore, simply adding to the budget the current shortfall amount of \$272 million annually, will be insufficient to meet future demands.

<sup>5</sup> Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov.18, 2011) (*USF/ICC Transformation Order*) at para. 126.

<sup>6</sup> Report and Order, Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, Connect America Fund, WC Docket No. 11-42, Telecommunications Carriers Eligible for Universal Service Support, and CC Docket No. 01-92, Developing a Unified Intercarrier Compensation Regime, FCC 16-33 (rel. March 30, 2016) (*RoR Reform Order*).

<sup>7</sup> For example, Petition for Reconsideration and/or Clarification of NTCA, WC Docket No. 10-90, et al. (filed May 25, 2016). at p. 6.

<sup>8</sup> For example, using the 2016 average cost per loop and assuming a per loop ARPU of \$42 for broadband transmission, the rate of return budget (including ACAM, CAF ICC, and AK Plan in addition to cost-based mechanisms) would need to exceed \$3.025 billion to cover loop costs.

implemented after a sufficient baseline budget is established.<sup>9</sup> Once the FCC has established this basis and implemented an inflationary factor, it should then set the duration of the budget to coincide with the duration of ACAM. This will ensure that the FCC continues to evaluate the budget in the future, but also allows it to coordinate future revisions in a more wholistic manner.

### **III. If the FCC increases funding for ACAM recipients, it must not do so at the expense of existing cost-based mechanisms**

While TCA supports increased funding for ACAM recipients,<sup>10</sup> the FCC must first “fully fund” the RLECs remaining on cost-based mechanisms. While TCA applauds the FCC’s willingness to work with RLECs in finding a path forward by offering an “increased certainty of funding,”<sup>11</sup> we would also emphasize that RLECs have borne the entire brunt of the FCC’s Budget Control Mechanism (“BCM”). Accordingly, these RLECs should be first in line for budgetary relief. Furthermore, this relief should not be limited to RLECs willing to forgo sufficient funding necessary in closing the urban/rural divide in exchange for increased certainty of support. The FCC should remain focused on the principles of the HCP under the context of universal service (as stated above) and only move forward with its ACAM proposals, provided that it does not hinder fully funding the cost-based mechanisms.

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<sup>9</sup> *NPRM* at para. 114.

<sup>10</sup> The FCC has defined “fully funding” as increasing the per-location cap to \$200.

<sup>11</sup> *NPRM* at para. 117.

#### **IV. The FCC should proceed with a new model offer – but only if it does not negatively impact cost-based RLEC recipients**

TCA supports the FCC’s proposal for a new ACAM offer extended to RLECs willing to accept lower support amounts in exchange for “increased certainty of funding.”<sup>12</sup> RLECs accepting lower support amounts could create additional headroom for those remaining on cost-based mechanisms.

TCA also supports the FCC’s proposal to adjust the model to reflect the unique challenges of deploying broadband to rural, tribal communities through the use of a Tribal Broadband Factor.<sup>13</sup> Reducing the funding threshold or funding benchmark to \$39.38 and a higher per-location cap is a good start to recognizing those challenges, although in many cases it may still fall short. For example, one TCA client that serves tribal land would need a per location cap of approximately \$500, more than two and a half times what the FCC is proposing, to not only meet the deployment obligations, but also to stay in compliance with loan covenants for RUS, which would be necessary to fund the ACAM build-out obligations.

A new model offer should not rely on only Form 477 data, which has proven to be unreliable for determining where competition exists within a study area.<sup>14</sup> The appropriate test for competition is one that is highly accurate – not one that is simply easier for the FCC staff to administer. Providing competitors with an opportunity to exaggerate their presence in an area, and reduce funding to the RLEC, is harmful to rural consumers. That competitor could then cherry-

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at paras. 120-121.

<sup>14</sup> Connect America Fund, WC Docket No. 10-90, Order, 30 FCC Rcd 14145 (WCB 2015); Wireline Competition Bureau Concludes the 100 Percent Overlap Challenge Process, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 9294 (2017).

pick the lower cost customers leaving the remaining customers stranded with an RLEC that does not receive support to deploy or maintain facilities in that census block or block group.

Furthermore, should the FCC decide to move forward with a new model offer, TCA would also remind the Commission that the ACAM was designed for the large price-cap carriers, and while the FCC has made adjustments to the model, it is not a one-size-fits-all solution. The ACAM frequently fails to accurately produce support needed in extremely high cost areas and caps support to extremely high cost locations that are in most need.

## **V. The FCC should continue its practice of uniform collections to reduce contribution volatility**

TCA supports the FCC's proposal to continue uniform collections for the HCP regardless of demand.<sup>15</sup> This policy would serve two purposes: 1) reduced fluctuation in the contribution factor, and 2) potential building of reserves that can be used to offset unforeseen problems or address emergency situations. Indeed, the FCC has recently used built up reserves to address unforeseen shortfalls in the HCP cost-based mechanisms<sup>16</sup> and to address the needs of providers and consumers in Puerto Rico and the US Virgin Islands after the devastating impact Hurricane Maria had on communications networks in these territories.<sup>17</sup> These are excellent reasons to continue this policy – it is good for consumers and provides flexibility to the FCC.

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<sup>15</sup> *NPRM* at para. 138.

<sup>16</sup> *Order* at paras. 73-82.

<sup>17</sup> Connect America Fund, WC Docket No. 10-90, Order. 32 FCC Rcd 7981. Rel. October 4, 2017.

## **VI. The FCC’s proposals of a threshold level of support largely disregard numerous limitations and caps on existing RLEC support**

The FCC proposes to establish a threshold level of support for RLECs that would not be subject to the BCM reduction.<sup>18</sup> It argues that such a threshold would provide cost-based RLECs with stability and predictability. These are laudable goals and TCA applauds the FCC’s desire to increase predictability into USF distributions. However, TCA reminds the FCC that these cost-based mechanisms provide recovery for costs already incurred by the RLEC, which equates the support to essentially a reimbursement. Further, in the Order accompanying the NPRM, the FCC adopted new rules and codified long held policies that restrict the expenses recoverable through the cost-based mechanisms.<sup>19</sup> The FCC took these steps to ensure only costs necessary for the “provision, maintenance and upgrading of facilities and services for which support is intended”<sup>20</sup> are recoverable through USF. That means that every dollar of cost that is reported to the FCC is legitimately necessary and therefore every dollar of USF to offset these costs is also necessary. These cost-based mechanisms also have numerous other controls, caps and limitations that ensure RLECs are investing and operating efficiently, including: 1) capital investment allowance, 2) operations expense limitations, 3) corporate expense limitations, and 4) a \$250 per line per month cap. So, while TCA appreciates the FCC’s efforts to establish a threshold of support, its focus should be on fully funding its existing cost recovery for cost-based RLECs.

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<sup>18</sup> *NPRM* at para. 148.

<sup>19</sup> *Order* at Section III.A,

<sup>20</sup> *Id.* at para. 16

## **VII. The FCC should not reduce the per line limit on USF, but should instead focus on stability and predictability in the cost-based mechanisms**

The FCC strangely requests comment on reducing the per line limit on USF from \$250/line per month to some lower amount.<sup>21</sup> The FCC provides no analysis as to why a lower limit is justified or necessary, it simply states that there are only a few RLECs who are impacted and more would be impacted if this cap was further reduced. The FCC seems to suggest that because only a few RLECs are impacted (and fewer filed waivers) - that the current cap of \$250 per location is too generous. What the FCC fails to consider, is that many RLECs slowed broadband deployments to ensure they don't run afoul of any caps or limitations on support, like the \$250 cap. This results in customers being relegated to unserved status through the "reasonable request" standard.<sup>22</sup> A reduction in this arbitrary cap would only heighten this problem and further delay needed broadband deployments. The FCC's proposal would also add yet another unwarranted change into an industry that has been reeling under unpredictable conditions for the past two years. Instead, unless the FCC can provide any real justification for this change, it should leave the \$250 cap alone and continue the work it began in the Order to stabilize the cost-based mechanisms.

## **VIII. The competitive overlap process has worked as intended and should not be weakened to harm consumers**

The FCC speculates that competitors have not historically participated in the competitive overlap process because they lack incentives and it asks whether "the benefit of eliminating

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<sup>21</sup> *NPRM* at paras. 158-159.

<sup>22</sup> Connect America Fund, WC Docket No. 10-90; Universal Service Reform – Mobility Fund, WT Docket 10-208; 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; Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking (Rel. June 10, 2014), FCC 14-54. At paras. 59-72.



support in competitive study areas outweighs the burden of the current process.”<sup>23</sup> TCA would offer an alternative explanation – that RLEC study areas are very rarely 100% covered by competitors.

The FCC’s 100% Competitive Overlap process was correctly designed to place the burden of proof on competitors, so that support wasn’t erroneously eliminated from a study area, resulting in stranded customers. The record demonstrates that competitors are participating in the process, however, their participation frequently involves notifying the FCC that its assumptions and interpretations of their Form 477 filings are not accurate. These competitors indicate that their Form 477 filings should not be interpreted as providing 100% coverage in all census blocks listed and they cannot guarantee that they serve every location in every census block where they serve.<sup>24</sup> Indeed, contrary to the FCC’s assertion that competitors are not participating due to lack of incentive, competitors are confirming that the lack of participation is due to an inability to serve 100% of a study area.

While the existing process is working as designed, TCA agrees with the FCC that it has entailed a significant amount of effort for the impacted RLECs. TCA recommends that the FCC consider extending the timeframe from every two years to every five years, or align the process with the funding period for ACAM. In the alternative, if the FCC finds that the administrative burdens outweigh the benefits of this process, it should consider eliminating the process altogether.

The FCC should not create an auction to distribute support in truly 100% competitively overlapped areas. The FCC adopted the elimination of support in 100% competitive areas in

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<sup>23</sup> *NPRM* at para. 161.

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

2011,<sup>25</sup> because it contended it was an inefficient use of scarce HCP funding to subsidize investments in areas where unsubsidized competitors can make a business case to serve at reasonably comparable service quality standards and prices. The FCC’s auction proposal would ignore this principle and would potentially shift support away from cost based RLECs serving true noncompetitive areas.

## **IX. The FCC should abandon once and for all the idea of means testing in the HCP**

The FCC should permanently abandon the idea of “means testing” for the HCP. While TCA can see why the idea on paper may be appealing to policymakers, in practice, it completely ignores the statutory mandate of universal service - to provide for reasonably comparable service at reasonably comparable rates.

Means testing also denies the reality of how service providers design and maintain networks. Networks are not built one location at a time and the costs of deploying a broadband-capable network do not change based on the income levels of the households in the service area. Finally, there is no good way to implement means testing for the HCP. Means testing at any geographic level (such as median income of a census block etc.) has the potential of being a discriminatory process – causing some customers to face exorbitant bills they can’t afford to pay because of who lived somewhere before them or who their neighbors happen to be. Means testing as a voucher program or other individual basis would run into many of the same verification issues experienced in the USF Low Income Program, including exposure of highly sensitive customer information and potential for abuse. Therefore, the FCC should abandon this idea once and for all.

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<sup>25</sup> *USF/ICC Transformation Order* at para. 281.

## **X. Conclusion**

In conclusion, TCA supports increasing the HCP budget for RLECs to meet future, not just current demand, adopting a second round of ACAM offers to “glide-path” RLECs as long as this does not impact cost-based providers, and continuing uniform contributions for the HCP. TCA also argues that the FCC should not reduce the per-line limit of support, nor explore means testing in the HCP.

Respectfully submitted,

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