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

COMMENTS OF THE USTELECOM ASSOCIATION

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EXECUTIVE SUMMARY

In the above-captioned proceeding the Commission requests comment on further reforms to establish a budget that will allow for robust broadband deployment in rate-of-return areas while minimizing the burden that contributions to the Universal Service Fund places on ratepayers. USTelecom supports fully-funding the current rate of return mechanisms as well as making an additional A-CAM offer and other measures that provide stability and predictability as well as stimulates broadband deployment in rural areas in order to close the digital divide.

USTelecom whole-heartedly supports the Commission's proposal to adopt an inflation factor adjustment which will increase the budget from $1.23 billion to $1.35 billion, however such an adjustment will not be enough to keep up with the increased costs associated with building a network that reaches further and further out into the more distant and more unserved and underserved portions of a service territory in rural America. Broadband providers of all sizes in rural America are now faced with a greater demand for service from rural consumers as well as increased demands for capacity. Such strains coupled with an overwrought budget that is not distributing enough support to give broadband providers the ability to offer consumers reasonably comparable rates in rural areas.

The high cost program is the underpinnings of all of the other programs and requires sufficient support in order for the other programs to be their most effective. The Commission should instead establish a budget that is wholistic in its approach and that fully funds the cost-based (a.k.a legacy) and A-CAM programs without making one budget dependent on the other.

USTelecom supports fully-funding existing A-CAM electors at the original $200 per location. The $200 per-location funding cap was originally adopted because it was deemed that that level of support was necessary to provide full support for locations where the average cost is much higher. If the Commission provides such support the deployment obligations which were already set forth in the Commission's rules can be executed by the carriers quickly and will ultimately lead to the deployment of more broadband in rural America.

In conjunction with fully-supporting the A-CAM, the Commission should also fully-fund cost-based broadband providers. Those carriers for whom an A-CAM election was not possible were unable to anticipate the severe impact that the BCM would have on cost-based providers while at the same time, facing ever increasing costs to run the network. This is worsened by the fact that support is insufficient, in part, because rural providers are having to provide service at rates higher than in urban settings. Due to caps on the fund, cost-based providers are unable to recover a significant percentage of their eligible costs. If the Commission increases the budget to fully fund the cost-based broadband providers rural broadband providers would have the incentive and certainty they need to match the targets set out in the current buildout obligations.

The Commission should also make a second A-CAM offer using the same parameters and deployment obligations originally adopted for the first offer. Such an offer should, however, be open to all carriers, not just carriers willing to accept lower support amounts in exchange for increased certainty of funding, including carriers previously excluded from A-CAM because they had 90% build-out in their service territory. USTelecom supports the Commission putting enough funding in the budget so that it anticipates the overall demand so that such an offer would be possible without impacting support available to cost-based providers.

With respect to revising the Budget Control Mechanism, the Commission should set a 95% threshold of support that is not impacted by the Budget Control Mechanism but instead of basing that threshold on each carrier's unconstrained 2016 or 2017 claims amount, the amount should be rolling such that the percentage is calculated using the lowest of the previous three years claims rather than a single year. Offering such a flexible determination is important because high cost support changes from year to year depending upon where a carrier is in their build cycle and therefore some years could potential favor some carriers more than others without consideration for this build cycle factor.

The deployment obligations that the industry supported and the Commission adopted in the *2016 Rate-of-Return Reform Order*[1] are still appropriate and supported by industry. The Commission should focus solely on providing the appropriate budget to support the program as designed.

There is an ongoing need to maximize the budget, however, the Commission has yet to initiate proceedings on the budget all parts of the USF program, therefore USTelecom argues that at a minimum it would be prudent to continue to collect at the current rate as is necessary to fulfill the required budget. Because the Commission is authorized to collect $11 billion but is only actually paying out $8.75 billion out of that amount, the Commission could potentially meet the additional budget needs of the high cost program while remaining within the authorized $11 billion collection. In the interim, the Commission should continue to collect at the $4.5 billion annual authorized amount for the high cost program.

[1] *See 2016 Rate-of-Return Reform Order* at 3148-3156.

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COMMENTS OF THE
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Pursuant to the Notice of Proposed Rulemaking (NPRM) adopted in conjunction with the Report and Order, Third Order on Reconsideration (Order) in the above-referenced proceeding (collectively, *Rate-of-Return Budget Order and NPRM)*,[2] USTelecom – The Broadband Association [3] respectfully submits these comments responding to the Commission's request for comment on further reforms to the rate-of-return high cost program that will establish a budget that allows for robust broadband deployment in rate-of-return areas while minimizing the burden that contributions to the the Universal Service Fund (USF) place on ratepayers while also providing stability and predictability now and in the future.[4]

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[2] *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, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29 (Mar. 23, 2018) (*Rate-of-Return Budget Order and NPRM*).
[3]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.
[4] *See Rate-of-Return Budget Order and NPRM* at 3, para 6.

I. INTRODUCTION

In March 2016 the FCC issued a Report and Order, Order and Further Notice of Proposed Rulemaking (*2016 Rate-of-Return Reform Order)*[5] that made significant changes to the way in which USF support is distributed to rate-of-return carriers. In addition to cutting opex and cap ex costs it also created a new mechanism for high cost support in A-CAM, creating CAF BLS. While USTelecom and other industry associations were able to achieve consensus support for the mechanisms adopted in that Order it has become quite clear in the last two years that although the current program is designed to be efficient, much like the other aspects of the high cost program, there is simply not enough money in the program's budget to make it successful. In the *Rate-of-Return Budget Order and NPRM,* the Commission acknowledges that a budget review and additional steps are necessary in stimulate broadband deployment in rural areas in order to close the digital divide.[6]

II. REVIEW OF RATE-OF-RETURN BUDGET

In reviewing the budget for rate-of-return carriers the Commission notes that it is seeking comment on the best way to revise the rate-of-return high cost program budget in such a way that it will allow for robust broadband deployment in rate-of-return areas while minimizing the burden that contributions to USF place on ratepayers and bring greater certainty and stability to these carriers.[7] The Commission specifically proposes adopting an inflation factor to help support the new budget, acknowledging that had the FCC accounted for inflation since 2011, the rate-of-return budget would have increased from $2 billion in the 2012 budget year to $2.193 billion in the 2018 budget year.[8] USTelecom whole-heartedly supports the adoption of an

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[5] *See Connect America Fund et al.*, WC Docket No. et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*2016 Rate-of-Return Reform Order*).
[6] *See Rate-of-Return Budget Order and NPRM* at 3, para 3.
[7] *See Id.* at 3, para 6.
[8] *See Id.* at 44, para 107.

inflation factor as proposed[9] but underlines the point that inflation alone does not account for all of the increases in costs that have impacted the budget and the high cost program.

The Commission correctly notes that that a budget designed to speed the deployment of 4 Mbps/1 Mbps broadband to rural America *may be insufficient* to encourage the deployment of the high-speed broadband networks that residents of rural America need.[10] In less than a decade, 10/1 Mbps or 25/3 Mbps and higher have gone from aspirational, to expected, and in many cases necessary to handle the increases in streaming traffic and consumer demand for more bandwidth. These consumer demands for broadband and plenty of it, explodes the costs of closing the digital divide to amounts not anticipated in 2012. Broadband providers of all sizes in rural America are now faced with a greater demand for service from rural consumers in addition to demands on capacity. These facts coupled with an overwrought budget that does not provide enough support to be able to provide consumers with reasonably comparable rates in rural areas is a recipe for disaster. This is exactly why the Commission seeks comment on the *appropriate level of support* and for that support to be "predictable and sufficient . . . to preserve and advance universal service" as required by the Act.[11] The key here is support that is *sufficient* to get the job done and close the rural digital divide.

Without the infrastructure provided by the high cost program in rural America all of the other programs such as Lifeline, Schools and Libraries and Rural Healthcare, to name a few, would not be able to meet their intended purpose. The "pipes" provided by the rural broadband providers that all of the cost-based and model-based mechanisms support are essential to ensuring the closing of the digital divide. It is these providers that ensure the success of the other programs.

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[9] CITE inflation factor proposal
[10] *See Rate-of-Return Budget Order and NPRM* at 44, para 108.
[11] *See Id.* at para 109.

One of the questions the Commission sets forth in order to try to make implementation of the high cost fund more streamlined is whether the Commission should establish a separate budget dedicated to HCLS and CAF BLS and whether a single budget should be set at $1.23 billion (the current amount available for HCLS and CAF BLS), at $1.35 billion (that amount adjusted by the inflationary ratio that reflects inflation since 2011), or at some other amount.[12] USTelecom members do not believe that establishing a separate budget is necessary. To do so would only lend more confusion to an already complex multi-mechanism program. Instead, the Commission should focus on setting a budget that is wholistic in its approach and that fully funds both programs - cost-based (a.k.a legacy) and A-CAM – and does not make one budget dependent on the other. One of the biggest obstacles to sufficiency and frankly the unpredictability of the program is the fact that A-CAM recipients get their portion of the budget first and then cost-based carriers receive what amounts to "left-overs." The Commission should instead budget for the needs of both types of carriers and not have one effect the other.

When you get into the question of the *appropriate* level of support for rural areas, one of the things that has never been considered in setting a cap on the fund is the plain fact that as rural carriers build further and further out from the most population dense portions of their service areas, the costs to build further and further out increase accordingly. While USTelecom members support and appreciate the Commission's recognition that an inflationary adjustment was and is necessary to help carriers keep up in today's economy, the increase from $1.23 billion to $1.35 billion will not be enough to keep up with the increased costs associated with building a network that reaches further and further out into the more distant and more unserved and underserved portions of a service territory in rural America. So, while increasing the fund based upon inflation is helpful it is not enough to factor in the natural increase of laying fiber in the even

[12] *See Id.*

more rural and low population areas of the country.

For example, one rural USTelecom member saw the costs of laying fiber increase 36% between 2014 and 2105 and another 23% increase above that the following year. Additionally, the costs of doing business since 2011 including the costs of utilities and providing employee healthcare continue to rise into the double-digit percentiles. These increases are only in part due to inflation and have not proven to have been offset by savings related to increased labor productivity or the lower cost of network equipment.

Additionally, there are ever increasing costs that are under-recovered by USF simply because the demands on capacity continue to increase due to the unrecompensed use of the network by edge companies. The existing $4.5 billion cap on the high cost USF program limits the ability of broadband providers to keep up with the demands on the network and provide reasonably priced service in rural America and this is resulting in a very real impact on the financial viability of America's rural broadband providers. These under-recovered costs are those that due to the expense caps, frozen NACPL and the Budget Control Mechanism (BCM) should be recoverable but are not due to an insufficiency in the budget. In a study (prepared by Alexicon) which looks at recovered vs. under-recovered costs for six cost-based providers across rural America charging consumers $179 per month for service, Alexicon determined that 43% of those carriers' costs were left either unrecovered or under-recovered. Of that total amount ($29,720,913) 84% - or $24,931,341 is under-recovered, in other words - eligible for support but not reimbursed due to the current caps USF.[13]

The confluence of all of these increased costs from a variety of sources puts significant pressure USTelecom members and necessitates that the Commission develop a realistic *sufficient*

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[13] *See* "Under-Recovered Expense Analysis (Using 2017 NECA Forecast Applied to USF Reforms)" and accompanying power point presentation, prepared by Doug Kitch, CPA, Principal, Alexicon (January 2018) (attached herein as *Appendix A*).

budget, which may require a limited increase in the current cap on the high cost program. USTelecom supports the Commission continuing to determine the amount of support available for HCLS and CAF BLS by subtracting A-CAM, Alaska Plan, and CAF ICC support from a single rate-of-return budget, but that budget should start with a number that is sufficient to fully fund both the cost-based and A-CAM mechanisms. Additionally, the overall budget should afford a new opportunity for cost-based providers to elect model-based support and establish a minimum threshold of support for cost-based legacy providers that would not be subject to the BCM. In order to accomplish that, the Commission needs to consider the amounts needed in each of these buckets.

A. Fully Fund Existing A-CAM Providers

The Commission seeks comment on whether it should use available support and any increases in budget headroom to make additional offers of A-CAM support to A-CAM electing carriers using a $200 per-location funding cap, as well as, whether additional deployment commitments may be appropriate, and, whether the FCC should collect additional contributions to fully fund all electors at this point, rather than calculating a second offer for electors under these circumstances.[14] Alternatively, the Commission also asks whether it if decides not to collect sufficient contributions to fully fund all electors, should it direct the Bureau to reduce the funding cap and/or prioritize support amounts to those areas that have the lowest deployment of broadband.[15]

In the *2016 Rate-of-Return Reform Order* the Commission made it clear that the $200 per location threshold was important to getting broadband out most effectively when it stated, "We direct the Bureau to calculate support using a $200 per-location funding cap, rather than an

[14] *See Rate-of-Return Budget Order and NPRM* at 54, para 146.
[15] *See Id.* at 54, para 146.

extremely high-cost threshold. We conclude that this methodology is preferable because it provides some support to all locations above the funding threshold. Even though the locations at or above the funding cap are not "fully funded" with model support, carriers will receive a significant amount of funding – specifically, $200 per month for each of the capped locations – which will permit them to maintain existing voice service and expand broadband in these highest-cost areas to a defined number of locations depending on density, or upon reasonable request, using alternative, less costly technologies where appropriate. This will allow significantly more high-cost locations to be served than if we were to use a lower funding cap."[16] The Commission also importantly pointed out that the $200 per-location funding cap adopted is significantly higher than what was adopted for purposes of the offer of support to price cap carriers, however that such support was necessary because it would provide full support for locations where the average cost is $252.50 per location.[17] These determinations make it clear that the Commission deemed $200 per location the necessary level of support. As such the Commission should follow through now by funding providers at that level. Because the Commission originally designed the program to offer support at $200 per location, deployment obligations for a $200 per location scenario already exist and can simply be executed by the carrier this year.

As A-CAM supporters have advocated for some time, the additional cost of providing A-CAM support at its original offer level of $200 per location would cost approximately an additional $100 million.[18] While that does add to the budget, the additional money needed will lead to a significant benefit in terms of broadband deployment. For example, as ITTA filed in an

[16] *See 2016 Rate-of-Return Reform Order* at 3107.
[17] *See Id.*
[18] *See* Letter from Michael J. Jacobs, Vice President, Regulatory Affairs, ITTA to Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, September 21, 2017 (*September 21, 2017 ITTA Letter*).

ex parte last year, the benefits of A-CAM funding at initial offer amount for their member TDS Telecom (TDS) are that TDS would receive an additional $7.1M per year, which TDS posits would allow the company to provide an additional 7,500 locations with higher speeds because they would now be considered as fully-funded locations instead of partially-funded.[19] They also point out that these locations would also get a new vectoring capable modem with advanced Wi-Fi – 802.11ac, and many of them will be able to get a 50Mbps or better product which would in turn mean an additional 22,000 locations that will benefit in non-A-CAM eligible areas in that they will be able to get 10/1 or better service.[20] TDS also submits that the increase would allow them to build the network faster because the additional funding in the initial years provides the opportunity to increase capital spend in the early years thus, building broadband more quickly.[21]

Using A-CAM funding, companies have already deployed hundreds of miles of fiber they could not have without the funding and any additional monies would improve that record even more. In a separate filing, ITTA also cites another example of a company that has layed fiber closer to customers in economically challenged areas such as the agricultural region of the Mississippi Delta, which prior to A-CAM funding was only able to provide customers 6/1 Mbps, and now two-thirds of those customers have access to speeds of 25/3 Mbps or greater and 98 percent have 10/1 Mbps.[22] Based on this sort of data it is clear that funding ACAM at $200 per location would make broadband at speeds of at least 10/1 Mbps available to at least approx. 46,000 unserved and 25,000 underserved consumers (there are nearly 70,000 unserved and underserved rural Americans). Chairman Pai himself has expressed that it is his highest priority

[19] *See* Letter from Michael J. Jacobs, Vice President, Regulatory Affairs, ITTA to Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, October 30, 2017 (*October 30, 2017 ITTA Letter*).
[20] *See Id.*
[21] *See Id.*
[22] *See* Letter from Michael J. Jacobs, Vice President, Regulatory Affairs, ITTA to Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, November 9, 2017 (*November 9, 2017 ITTA Letter*).

to make sure every American who wants high speed internet access can get it AND that carriers need to have certainty to make long-term investment decisions that will lead to greater connectivity – funding ACAM at $200 fills these goals.[23] Given clear need for the additional funding in order to support the proven policy goal, the Commission should fully fund the A-CAM carriers as described.

B. Fully Fund Cost-Based Legacy Providers

As previously detailed above, there are significant ways in which the cap on the high cost program has had a severe economic impact on broadband providers in rural America. As such, USTelecom also supports the Commission fully-funding high cost USF support for the cost-based broadband providers. In this item, the Commission clearly anticipates that cost-based providers will seek to raise the budget and urges commenters to provide a detailed economic analysis on the amount of support these carriers would need to meet mandatory buildout requirements while offering at least one plan at the comparative benchmark rate, and why/if current support levels are insufficient.[24] While it is difficult to determine exactly how much would be required to establish such a budget, the Commission can begin by looking to its own data that shows how much cost-based providers would have received without the BCM impact. This item reports the shortfall as $180 million for last year alone[25] and is confirmed by the recently released "80 Percent Report" which shows the amounts each carrier would receive without the BCM and what it received with the BCM.[26] The Commission agreed that this shortfall so severely impacted the cost-based carriers that the Commission opted to restore that

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[23] *See* Letter from Ajit V. Pai, Chairman, FCC to Hon Mike Bost 10/24/2017.
[24] *See Id.* at 46, para 113.
[25] *See Rate of Return Budget Order and NPRM* at 35, para 78.
[26] *See Wireline Competition Bureau Releases Illustrative Model Results to Aid in Preparation of Comments in Response to 2018 Rate-of-Return Reform NPRM*, Public Notice, WC Docket No. 10-90 (DA 18-481, May 11, 2018) and referenced spreadsheet at https://apps.fcc.gov/edocs_public/attachmatch/DOC-350658A1.xlsx. (Table 13.1).

loss by directing the Universal Service Administrative Company (USAC) to come up with an efficient methodology for calculating the amounts withheld due to the BCM and repaying rural broadband providers $180 million dollars in lost support.[27] What is particularly troubling is that the just recently announced BCM for the 2018-2019 funding year has increased an from 12.35 % last year[28] to 15.52% as shown in the recently released USAC projections.[29] These numbers should also be considered in projecting what is needed to provide sufficient funding.

Firstly, it is important to note that throughout the years leading up to the *2016 Rate-of-Return Reform Order* the community of rural broadband providers and their advocates worked diligently to give the Commission input and come to a consensus on a cost-based mechanism that would work within the confines of the existing program and at the same time establish additional accountability the Commission was seeking.[30] Those carriers for whom an A-CAM election did not seem possible supported mandatory buildout requirements and agreed to offer at least one plan at the comparative benchmark rate that was established with the expectation that the support available would be adequate.[31] What these providers were unable to anticipate was the severe impact that the BCM would have on cost-based providers while at the same time, facing ever increasing costs to run the network. This is worsened by the fact that support is insufficient, in part, because rural providers are having to provide service at rates higher than in urban settings. This is further exacerbated by demands on networks for more and more capacity and higher speeds in large part due to streaming. As noted herein, the percentage of under-recovered costs for a sampling of rural broadband providers show that 84% of unrecovered costs

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[27] *See Rate of Return Budget Order and NPRM* at 36, para 81.
[28] See USAC Budget Control Mechanism For Rate-of-Return Carriers 2017-18 Budget Analysis at https://www.usac.org/hc/program-requirements/budget-control-rate-of-return.aspx
[29] See USAC Budget Control Mechanism For Rate-of-Return Carriers 2018-19 Budget Analysis at https://www.usac.org/hc/program-requirements/budget-control-rate-of-return.aspx
[30] *See 2016 Rate-of-Return Reform Order* at 3145-48.
[31] *See Id.*

are eligible for support but are under-recovered due to the current limits and caps on the fund.[32]

If the Commission increases the budget to fully fund the cost-based broadband providers within the high cost program those rural providers will be able to provide additional broadband deployment. Any budget increase would give rural broadband providers the incentive and certainty they need to match the targets set out in the buildout obligations in the *2016 Rate-of-Return Reform Order*.[33] Such incentivization towards investment has been one of the Commission's longstanding goals, which the Commission could achieve by creating more predictability in the system.[34] The Commission rightly noted in the *2016 Rate-of-Return Reform Order* and in the current item that predictability is highly desirable for investment purposes.[35]

More specifically, in the instant NPRM the Commission seeks comment on how the Commission should take into account the reforms it has adopted in the *2016 Rate-of-Return Reform Order* as well as proposals in this Notice—reforms and proposals that will bring more predictability to rate-of-return carrier support, while spurring deployment and mitigating regulatory inefficiencies.[36] One of the ways the Commission could continue to implement the changes it made in the *2016 Rate-of-Return Reform Order* and improve the predictability all broadband providers need would be to complete the competitive overlap proceeding it designed in the *2016 Rate-of-Return Reform Order*. The Commission has promised that there will be an overlap proceeding initiated in implementing that Order and the Commission has not completed that effort. The overlap proceeding as designed would require competitors to prove that they provide overlap in the rural broadband providers service area.[37] The overlap proceeding was

[32] *See Appendix A.*
[33] *See 2016 Rate-of-Return Reform Order* at 3240-42; 47 C.F.R. §54.308.
[34] *See Rate-of-Return Budget Order and NPRM* at 4, para 7.
[35] *See 2016 Rate-of-Return Reform Order* at 3097.
[36] *See Rate-of-Return Budget Order and NPRM* at 45, para 111.
[37] *See 2016 Rate-of-Return Reform Order* at 3132-3141.

designed to determine any overlap and “lock it in” for the remainder of the 10-year term. This calculation is essential to the rural broadband providers providing service because they need to be able to predict where they will receive support and be sure that that support will not disappear at some undetermined time. Ideally, many carriers would like to see this term extended to the full depreciation of the equipment or term of the loan taken out to make the investment because it would provide even more reassurance that carriers would be able to predict that they would have the capital to support the investment. Currently, many rural broadband providers are inhibited from making further investments because they don’t know the status of ongoing high cost USF in their service areas not only because of the unpredictable BCM but also because the overlap question remains a lingering concern.

As far as when the Commission should next revisit the budget, given that in the *2016 Rate-of-Return Reform Order* the Commission established a 10-year term for A-CAM electors in order to give carriers a sufficient and predictable funding stream[38] USTelecom supports a new budget lasting until at least 2026, the end expiration of the A-CAM funding. Revisiting the budget in 6 years, as set forth in the *USF/ICC Transformation Order* would only serve to disrupt the more streamlined and predictable timeframe the Commission attempted to establish in the *2016 Rate-of-Return Reform Order*. Such a timeframe will also allow for some flexibility to make adjustments as marketplace circumstances warrant. That said, it would behoove the Commission to look at the stressed budgets for other aspects of the high cost program and other programs under the USF umbrella in the very near future in order to ensure the overall fund’s viability.

C. Open New A-CAM Offer To All Eligible Providers

This budget should however also factor in a budget that would fully fund a new model

[38] *See 2016 Rate-of-Return Reform Order* at 3097.

offer in addition to fully funding the original A-CAM offer for all existing A-CAM providers. Others have estimated that an additional offer of A-CAM support would likely result in 136 more carriers on model-based support which would be approximately an additional $71.5 million before transition payments – and that the more providers that opt-in will result in less of an impact on the fund.[39] USTelecom agrees that the Commission should factor into this number the support left over from glide path carriers, which would decline over the 10-year term as transition payments phase down to the model amount then be available to carriers continuing to receive HCLS and CAF BLS. The Commission states in this item that if all eligible carriers accept this offer, it would result in approximately $66.6 million more support per year for the 10-year A-CAM term.[40] Ultimately, without knowing how many carriers would accept a new A-CAM offer, it is difficult to predict the exact number, but USTelecom believes it is unlikely that there will be massive A-CAM adoption by cost-based carriers in such a way that the budget will be severely impacted. We do know, however, that this number is somewhere in the $70 million range and that more importantly, where a broadband provider seeking another opportunity to receive model-based support is able to do so, that opportunity will result more broadband to rural America and additional predictability for those who opt-in.

Any new A-CAM offer should use the same parameters adopted in the *2016 Rate-of-Return Reform Order*, however, it should be open to all carriers, not just carriers willing to accept lower support amounts in exchange for increased certainty of funding. Additionally, it should be inclusive of carriers previously excluded from A-CAM because they had 90% build-out in their service territory. Although USTelecom understands that allowing only glide path carriers into a new A-CAM could create additional headroom for legacy rate-of-return carriers,

[39] *See September 21, 2017 ITTA Letter*.
[40] *See Rate-of-Return Budget Order and NPRM* at 54, para 143.

this proposal would work against some of the Commission's own policy goals.

The Commission was clear in the *2016 Rate-of-Return Reform Order* that it wanted to encourage as many carriers as possible to participate in the A-CAM.[41] Although the promised predictability of A-CAM did not necessarily meet the financial needs of some cost-based carriers, it is possible that some carriers who may have been on the bubble between the two programs would like the opportunity to now take advantage of that predictability given the way that the BCM has impacted most carriers. The Commission should, as a matter of policy, support such a choice. Although under the current cap on the budget and the design of these mechanisms, this might put a strain on the budget for cost-based carriers, USTelecom argues that if the Commission adopts USTelecom's suggestion herein to set the high cost and CAF BLS budget at an amount that fully funds both mechanisms and does not make the mechanisms dependent on each other, then it follows that full support of all carriers that wish to elect A-CAM is possible. This is the wholistic approach the Commission should take.

The support amounts available for electing carriers, as well as their accompanying obligations should track that of other carriers that opted in to A-CAM, adjusted for number of years left in the program. If the FCC extends any new A-CAM offer it should use the original process it used for elections, tracking the two-step election process the Commission used for the first A-CAM offer. As it did previously, the Bureau should first release a public notice showing the offer of model-based support for each carrier in a state and associated deployment obligations, including the number of fully funded and capped locations and rural broadband providers would have a 30-day time frame should be used to make the election on a state-by-state basis whether they elect to receive model-based support. Ideally, the elections would be

[41] *See 2016 Rate-of-Return Reform Order* at 3096, noting desire to move towards a mechanism that reflected forward-looking costs.

irrevocable because as advocated herein the Commission would collect sufficient amounts to fully fund the offers.

The Commission proposes in this item that if the budget is insufficient, that the Commission adopt a methodology similar to that used to revise the first A-CAM offers.[42] The Bureau would approve fully funded amounts for glide path carriers. The Bureau would also release a public notice showing the revised offers for all other carriers. Carriers would have 30 days to accept the revised offer. While this design does track the original A-CAM election process, USTelecom supports the Commission putting enough funding in the budget that anticipates the demand so that such a scenario will not be necessary. To reiterate, if the Commission's goal is to promote spread of broadband and close the digital divide than the budget should be increased accordingly so that having to revise an A-CAM offer does not happen.

USTelecom also supports the proposal to include census blocks where an incumbent or its affiliate is providing 10/1 Mbps or better broadband using either fiber to the premises (FTTP) or cable technologies, providing model support to maintain and upgrade existing networks is financially feasible and may create an additional incentive for legacy providers to consider shifting to model-based support,[43] but not just because this offer would be limited to glide-path carriers. In the *2016 Rate-of-Return Reform Order* the Commission recognized that these deployed census blocks require ongoing funding both to maintain existing service and in some cases to repay loans incurred to complete network deployments, but concluded that it was appropriate to adjust the model to exclude them at that time in order to advance its policy

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[42] *See Rate-of-Return Budget Order and NPRM* at 54, para 147.
[43] *See Id.* at 48, para 121.

objective of advancing broadband deployment to unserved customers.[44] USTelecom disagreed with the decision to exclude them in 2016 and supports the proposal to include support for those areas now, however, it should do so for all A-CAM electors whether current or future. As previously stated, USTelecom supports a second A-CAM opportunity for **all** cost-based carriers and if the Commission should change it rules to allow for support in census blocks where an affiliate is providing 10/1 Mbps or better or using FTTP or cable technologies then it should do so for all current *or* future participants in the A-CAM.

The same reasoning is true with respect to other aspects of an additional A-CAM offer. If the Commission is going to allow other carriers to elect the A-CAM then they should conduct the same streamlined challenge process they used before[45] rather than update the broadband coverage data with the most recent publicly available FCC Form 477 data prior to any additional offer of support and rely on the certified FCC Form 477 data rather than conducting a time-consuming and administratively burdensome challenge process as proposed by the Commission.[46] As the Commission noted in the *2016 Rate-of-Return Reform Order,* "we do want to take steps to ensure that support is not provided to overbuild areas where another provider already is providing voice and broadband service meeting the Commission's requirements."[47] The importance of this policy interest has not changed in the last two years therefore, all entrants in to the A-CAM should be afforded the same opportunities and basis for support.

USTelecom also supports utilizing the same terms that were adopted in the original A-CAM offer, adjusted for any timing and obligations due to what is now a compressed schedule.

[44] *See 2016 Rate-of-Return Reform Order* at 3109.
[45] *See Id.* at 3115
[46] *See Rate-of-Return Budget Order and NPRM* at 48-49, para 123.
[47] *See 2016 Rate-of-Return Reform Order* at 3115.

For example, USTelecom supports, aligning the term of support for this new model offer with the 10-year term of the first A-CAM offer, in other words, if support is authorized pursuant to a second A-CAM offer in 2018 the Commission should provide a nine-year term of support that will expire at the end of 2026, with support beginning January 1, 2018. Doing so allows for the certainty needed to stimulate investment with the added benefit of promoting the FCC's interest in administrative efficiency by keeping all participants on the same timeline.

Additionally, USTelecom supports the proposals to use a three-tiered process to transition electing carriers from the legacy support mechanism to the model;[48] to base the transition payments on the difference between model support and legacy support, and phase down transition payments over longer periods of time where that difference is greater;[49] and, to adjust the percentage reductions also to align with the shorter support term.[50] That said, if the Commission wanted to modify the transition payments so that a greater portion of the available budget will be directed to increased broadband deployment obligations as proposed[51] USTelecom would also support that alternative as well as the proposal to vary the deployment obligations by density if a carrier forgoes transition payments or accepts faster transitions;[52] to vary the deployment obligations by density, as the FCC did for the previous A-CAM offers.[53]

Similarly, USTelecom supports the proposal to require carriers electing a new model offer to meet the same deployment milestones as the Commission requires for existing A-CAM recipients, adjusted for the proposed nine-year term of support or as appropriate which includes

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[48] *See Rate-of-Return Budget Order and NPRM* at 50, para 129.
[49] *See Id.*
[50] *See Id.*
[51] *See Id.*
[52] *See Id.*
[53] *See Id.* at 50, para 132, explaining that ccarriers with a density of more than 10 housing units per square mile be required to offer at least 4/1 Mbps to 50 percent of all capped locations; ccarriers with a density of 10 or fewer housing units per square mile be required to offer at least 4/1 Mbps to 25 percent of all capped locations; and, the rremaining capped locations would be subject to the reasonable request standard.

the requirement that these carriers offer at least 25/3 Mbps and 4/1 Mbps to the requisite percentage of locations, depending on density by the end of 2026 and affords the same flexibility other A-CAM recipients received which allows them to deploy to only 95 percent of the required number of fully funded 10/1 Mbps locations by the end of the term of support. Carriers adopting any new A-CAM offer should also be required, as the Commission proposes, to report geocoded location information for all newly deployed locations that are capable of delivering broadband meeting or exceeding the speed tiers and adopt defined deployment milestones, so that the same previously adopted non-compliance measures would apply.

III. ESTABLISHING A THRESHOLD LEVEL OF SUPPORT NOT SUBJECT TO THE BUDGET CONTROL MECHANISM

The Commission rightly asks for ways in which the BCM effects rate comparability in conjunction with the overall review of the budget[54] and ways in which the BCM could be adjusted for legacy carriers in order to ensure that there is less of a severe impact on support levels.[55] Proposals include modifying the BCM to use only a pro rata reduction applied as necessary to achieve the target amount and no longer include a per-line reduction and seeks comment on this proposal and or providing legacy providers a threshold level of annual support that would not be subject to a budget cap.[56] USTelecom supports both of these proposals, however, it is more important for the Commission to adopt its second proposal of establishing a floor for a level of high-cost support that would not be subject to the BCM.[57] Of the four proposals for how to establish such a threshold, USTelecom supports the Commission's proposal to set the uncapped threshold at a specified fraction of each carrier's unconstrained 2016 or 2017

[54] *See Rate-of-Return Budget Order and NPRM* at 54, para 148.
[55] *See Id.* at 54-56, paras 148-154.
[56] *See Id.* at 55, para 150.
[57] *See Id*. at 55, para 151.

claims amount[58] however with an important variation.

The Commission should set a **95%** threshold of support that is not impacted by the BCM but instead of basing that threshold on each carrier's unconstrained 2016 or 2017 claims amount, the amount should be rolling such that the percentage is calculated using the lowest of the previous three years claims rather than a single year. Offering such a flexible determination is important because high cost support changes from year to year depending upon where a carrier is in their build cycle and therefore some years could potentially favor some carriers more than others without consideration for this build cycle factor. In short, taking a snapshot and using it as a threshold will not work. This is demonstrated in the Commission's own recently released "80 Percent Minimum Report" which shows what a cost-based carriers would have received without the BCM for FY 2017 and what would be the projected amount of support if the BCM were altered to allow a carriers to receive a minimum of 80% of its applicable A-CAM offer.[59] The Commission has provided this spreadsheet to assist commenters in understanding their proposal to adjust the BCM to allow carriers to receive a minimum of 80% of their potential A-CAM offer.[60] If you utilize the spreadsheet to show you what percentage of their 2017 unconstrainted support would be available at the 80% of the A-CAM offer the percentages range from 61.72% to 132.69%. This result shows quite a range. At least in part, this range is because basing support on a percentage of a snapshot is not a realistic view in a system where costs change from year-to-year. The Commission itself points out the unreliability of the BCM to fairly distribute the reductions when it acknowledges that one of the biggest problems is that the reductions in support

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[58] *See Id*. at 55, para 153.

[59] *See Wireline Competition Bureau Releases Illustrative Model Results to Aid in Preparation of Comments in Response to 2018 Rate-of-Return Reform NPRM*, Public Notice, WC Docket No. 10-90 (DA 18-481, May 11, 2018) and referenced spreadsheet at https://apps.fcc.gov/edocs_public/attachmatch/DOC-350658A1.xlsx.

[60] *See Rate-of-Return Budget Order and NPRM* at 55, para 152.

are not evenly distributed among states or carriers.[61]

In asking for comment about the budget overall the Commission asks how it should account for the fact that recipients of CAF BLS and HCLS are uniquely situated because each recipient effectively determines its own support claims through its behavior (its expenses and capital investments) and each recipient's behavior has a collective effect on all recipients of these funds due to the budget cap (the fact that spending by one legacy carrier could reduce support available to other providers once adjustments are made to ensure that total spending falls below the cap).[62] Our suggestion to take into account multiple years of costs helps lessen the problem of trying to predict changing support claims.

It is also important to note that due to changes adopted in the *2016 Rate-of-Return Reform Order*, it is still unclear what impact the decision to make funding specific to plant versus non-plant will have on support. Broadband providers at present are unable to predict the impact of such rule changes until they see the result of their 2017 cost studies to determine how those changes shake out in terms of the level of support as well as what the current demand on the fund actually is for items that were partially-funded in the past. Providing the flexibility we request in the our proposal, as well as, at a minimum, guaranteeing that the threshold lasts for the remainder of the 10-year A-CAM term should give carriers some predictability.

Furthermore, a threshold this high is essential because if the Commission continues to utilize a BCM it will continue to fluctuate. A prime example of the unpredictability is that the BCM has now deepened between the 2017-2018 cycle and the 2018-2019 cycle. Last year it was 12.35 %,[63] and now the new projections just released show the BCM as 15.52%.[64] In the Order

[61] *See Id. at 35, para 78.*
[62] *See Rate-of-Return Budget Order and NPRM* at 45, para 111.
[63] See USAC Budget Control Mechanism For Rate-of-Return Carriers 2017-18 Budget Analysis at https://www.usac.org/hc/program-requirements/budget-control-rate-of-return.aspx

associated with this NPRM the Commission acknowledged that the BCM impact was devastating on cost-based legacy carriers to such an extent that they directed USAC to give those carriers an additional $150 million to correct this loss in support.[65] As Chairman Pai so eloquently stated when the BCM went up again for the upcoming year to 15.52%, "the prior Administration's budget control mechanism has created constant uncertainty for small, rural carriers, endangering their ability to make long-term investment decisions to bring high-speed broadband to the millions of Americans who still lack it. That's why earlier this year we allocated $180 million to such carriers as a stop-gap measure to avert budget cuts for the current funding year. But now small carriers are facing even more severe cuts in the coming year, which will only exacerbate the digital divide in rural America. That highlights the importance of the Notice of Proposed Rulemaking we advanced earlier this year."[66]

The other options offered such as setting the uncapped amount of annual support at 80 percent of the amount a legacy carrier would have received had they elected the new model offer (based on a funding cap of $146.10 per location) is not practical. As previously argued herein, when the industry associations worked on consensus proposals for A-CAM support that would most effectively deploy broadband to rural America, it was based on the $200 per location. Although the current budget does not support that amount, all parties continue to argue that $200 per location is the amount of funding that should be offered to support the original intent to spread broadband. Therefore, at a baseline the Commission should be supporting A-CAM at $200 per location, which would make the utilization of $146.10 as a basis – an amount we consider to be an arbitrarily low amount – then taking a lower percentage of that, a method that

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[64] See USAC Budget Control Mechanism For Rate-of-Return Carriers 2018-19 Budget Analysis at https://www.usac.org/hc/program-requirements/budget-control-rate-of-return.aspx
[65] *See Rate-of-Return Budget Order and NPRM* at 35-36, paras 77-82.
[66] *See* Statement of Chairman Ajit Pai on Projected USF Budget Cuts for Small, Rural Carriers, News Release, FCC, May 1, 2018.

would only serve to undercut the capital budget of cost-based legacy carriers.

IV. DEPLOYMENT OBLIGATIONS

The Commission also seeks comment on whether each carrier should have a new minimum deployment obligation that is based on the number of locations that would be served under the revised A-CAM model at an 80 percent funding level and each carrier would have further deployment obligations based on any additional support it is forecasted to receive in excess of its uncapped threshold level of support.[67] Changing the deployment obligations at this stage of the game is unnecessary. The deployment obligations that the industry supported and the Commission adopted in the *2016 Rate-of-Return Reform Order*[68] are still appropriate and supported by industry. The only countervailing difference between now and when that Order was adopted is the shortfall in the budget. The rules as adopted are sufficient to enable the deployment of broadband that will help to close the rural digital divide. The Commission should focus solely on providing the appropriate budget to support the program as designed.

V. COLLECTIONS

The Commission also seeks comment on whether the FCC should extend its direction to USAC to forecast total high-cost demand as no less than one quarter of the annual high-cost budget, regardless of actual quarterly demand in order to minimize volatility in contributions.[69] The Commission also asks if uniform collections with a reserve fund a prudent budgetary practice or an unnecessary change to the FCC's traditional framework.[70] The Commission determines in the Report and Order portion of this item, that it is necessary to direction USAC to continue forecasting a uniform quarterly amount of high cost in order to ensure stability in the

[67] *See Rate-of-Return Budget Order and NPRM* at 56, para 156 .
[68] *See 2016 Rate-of-Return Reform Order* at 3148-3156.
[69] *See Id.* at 51-52, para 138.
[70] *See Id.*

contribution factor pending ongoing implementation of various high-cost reforms pending further Commission action.[71] Given that this action was in because part of a need to maximize the budget due to the shortfall carriers experienced by rural carriers in the last year,[72] it would be prudent for the Commission to continue to collect up to the existing high-cost fund budget of $4.5 billion.

In a recent speech, Commissioner O'Reilly noted that the Commission has authorized universal service spending of $11 billion but is actually disbursing $8.75 million out of that amount.[73] Although the Commission has initiated this proceeding, it has yet to initiate proceedings on the budget for all parts of the USF program. Potentially, additional budget needs for the high-cost program could be met without an increase in the authorized spending for the universal service fund as a whole.

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[71] *See Id*. at 3, para 4 and 32-33, paras 70-71.
[72] S*ee Id.*
[73] *See* Remarks of FCC Commissioner Michael O'Rielly Before the American Enterprise Institute, April 19, 2018.

USTelecom applauds the Commission for seeking ways to streamline and encourage additional efficiencies in the elements of the USF program raised in this NPRM. However, we also urge the Commission to act in a considered fashion noting that the despite the changes made to improve the program two years ago, the economic impact on rural broadband providers has been most harshly felt simply because the program itself is underfunded. Providing additional funding and making changes to how the budget is implemented is consistent with the Commission's policy goals, and if done prudently will provide certainty, stability, and predictable support as part of the overall reform framework and would help carriers meet the Commission's goals for improvement and extension of broadband facilities and service.

Respectfully submitted,

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