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 GRANITE STATE TELEPHONE, INC.

Granite State Telephone, Inc. ("Granite State" or the "Company"), hereby submits these reply comments in response to the Federal Communications Commission's ("FCC" or "Commission") March 23, 2018 *NPRM* wherein the FCC seeks input on a number of items related to the high-cost Universal Service Fund ("USF").[1] One such item that the FCC sought comment on in the *NPRM* is changing the 100 percent overlap process that phases out legacy high cost support in rural incumbent local exchange carrier ("RLEC") study areas that are 100 percent overlapped by one or more unsubsidized competitors. Other items include potential new model offers for "glide path" and "non-glide path" carriers.[2]

Granite State is a rate-of-return communications provider serving New Hampshire that traces its origins back to 1877. The Company serves a vital role in the communities where it

[1] *See Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking,* WC Docket Nos. 10-90, 14-58, 07-135, CC Docket No. 01-92, FCC 18-29 (rel. March 23, 2018) ("*NPRM*").
[2] Glide path carriers are those carriers that chose to elect A-CAM support where the offer of A-CAM support is less than the legacy support that they receive. *Id.* at para. 117.

serves, providing jobs and critical communications services. Granite State is concerned about the proposed changes to the 100 percent overlap process that would impact individuals and businesses in these communities, especially the introduction of an auction process that would disrupt the well-balanced eligible telecommunications carrier ("ETC") framework established in the Communications Act of 1934, as amended (the "Act") and state carrier of last resort obligations.

Granite State is also concerned that communities in its service area would be disadvantaged were the Commission to make a new offer of Alternative Connect America Model ("A-CAM") support that would only be for glidepath carriers or that would include non-glidepath carriers but exclude those with 90 percent or more 10/1 Mbps. Given the passage of time since the original offer was made, it is likely that some legacy carriers that were below 90 percent 10/1 Mbps have now exceeded that threshold. These and any other carriers with 90 percent or more 10/1 Mbps should be allowed to accept this form of support were a new offer to be made. This would allow all legacy carriers to determine whether A-CAM support would better spur broadband deployment to their rural communities and at higher speeds than remaining on legacy support and make their election accordingly.

I. The FCC's Current 100 Percent Overlap Process Serves the Public Interest

In the *USF-ICC Transformation Order*, the FCC adopted a rule in which all high-cost support of an RLEC would be phased out over three years where one or more unsubsidized competitors offers voice and broadband to 100 percent of the residential and business locations in the RLEC's study area.[3] In promulgating this "100 percent overlap rule," the FCC found that

[3] *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier*

there are instances where an unsubsidized carrier offers broadband and voice to "a significant percentage of customers (typically where customers are concentrated in a town or other higher density sub-area), but not to the remaining customers in the rest of the study area, and that continued support may be required to enable the availability of supported voice services to those remaining customers."[4] Accordingly, the FCC determined that if support for an RLEC were to be eliminated due to competitive overlap, the competitor must demonstrate that it offers voice and broadband to all locations within the study area.

Currently, the FCC conducts a biennial review of competitive overlap, and in the two reviews that have occurred to date, only one study area was found to be 100 percent overlapped by unsubsidized competitors. This appears to be the genesis of the FCC's proposal in its *NPRM* when it asks questions about the effectiveness of the 100 percent overlap process, and if the current mechanism should be replaced by something more effective at ensuring that high cost USF support is not being used in areas that are competitively viable. Specifically, in the *NPRM*, the FCC asks, "should we focus only on study areas that are 100 percent overlapped according to FCC Form 477 data, or should we focus on some lesser percentage, such as 90 percent overlapped or greater?"[5] The FCC also asks if an auction should be used rather than the current 100 percent overlap process, and if the overlap percentage should be determined at 10/1 Mbps, 25/3 Mbps, or even higher.

Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17767-68, para. 283 (2011) (*USF/ICC Transformation Order*); *aff'd sub nom., In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); *see also, Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7068-69, paras.54-56 (2014) (codifying the 100 percent overlap rule).

[4] *Id.* at 17767, para. 282.

[5] *NPRM* para 163.

Granite State joins with the several commenters that demonstrate that the FCC's 100 percent overlap rule should not be changed.[6] RLECs are ETCs and are subject to carrier of last resort obligations. As such, they are required to serve all locations within their service area, either under the reasonable request standard or due to buildout obligations. As the Commission aptly noted in its *USF-ICC Transformation Order*, in situations where competitors do not serve 100 percent of the locations within an RLEC's study area, "continued support may be required to enable the availability of supported voice services to those remaining customers."[7] Accordingly, any proposal that seeks to lower the amount of coverage below 100 percent and eliminates support from the RLEC places a certain amount of individuals and businesses at risk of losing access to voice and broadband services.

This would indeed be the case were the FCC to utilize a reverse auction process if the 100 percent threshold were to be lowered. Under a reverse auction, the entire amount of USF support would go to the entity that proposes to serve the entire study area at the lowest cost. As stated by Blooston, "Today, most competitive carriers focus their service offerings in denser parts of rural ILEC service areas and do not provide service to customers in the higher cost areas. Removing support from rural ILECs in this circumstance would limit their ability to serve this vulnerable population."[8] Commenters also observe that using reverse auctions in this context would reduce broadband deployment, curtail existing maintenance and operations and could even lead to reductions or termination of service and defaults on construction loans.[9] Additional issues would arise if a competitor was awarded the support given the processes which must be

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[6] *See*, e.g., Comments of The Blooston Rural Carriers ("Blooston Comments") at 16; Comments of NTCA-The Rural Broadband Association at 57-59; Comments of WTA-Advocates For Rural Broadband ("WTA Comments") at 35-42.
[7] *See supra* note 4.
[8] Blooston Comments at 16.
[9] *See*, *e.g.* WTC Comments at 40-41.

undertaken by a state commission to determine whether to designate a second ETC in an area served by a rural telephone company.[10] Further, state commissions would then have to determine how carrier of last resort obligations apply to the competitor and how the competitor can fulfill those obligations with less funding than the RLEC received. While all of these regulatory hurdles are underway, deployment of broadband to rural consumers continues to be delayed and possibly never received as the competitor may upgrade only those customers where it already was serving and not to the percentage where overlap does not occur.

Further, were the Commission to lower the threshold below 100 percent and adopt a reverse auction, the percentage could go well below the 90 percent referenced in the *NPRM*. For example, the Wireless Internet Service Providers Association ("WISPA") argues in its comments that, "[a] reverse auction to award support should be initiated not when all parts of the study area are subject to competitive overlap, but rather in all areas where there is partial competitive overlap exceeding 50 percent of the relevant study area," as determined by the FCC Form 477.[11] WISPA does not cite why it believes that 50 percent is an appropriate threshold for determining competitive overlap.

Granite State opposes this proposal and notes that 50 percent "of the relevant study area" may only include the populated centers, and says nothing about the state of competition in more rural areas in a study area – which are more than likely, not competitive. As noted above, requiring an auction could result in a lack of interest if the amount of support is insufficient to provide state-of-the-art broadband to the most rural locations, especially if the auction is triggered at such a low percentage as 50 percent. WISPA does not address issues raised above such as what would happen if the RLEC should lose its high cost support or the great deal of

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[10] *See* 47 U.S.C. § 214(e)(2).
[11] WISPA comments at 7.

insufficiency and unpredictability that would occur if a reverse auction mechanism were used. WISPA seems to falsely assume that one or more competitors in a study area with only half competitive overlap will pick up the slack and participate in an auction, but there is no evidence to suggest that would be true in study areas nationwide. Granite State fears that an overlap percentage lower than 100 would leave many rural consumers behind with no broadband service.

II. The Current 100 Percent and Legacy Challenge Process Rightly Places the Burden on the Competitor

In its 2016 Reform Order, the FCC adopted an overlap process for carriers remaining on legacy support and utilized a similar process that was adopted for the 100 percent overlap process. Under both processes, the FCC rightly placed the burden of proof on the unsubsidized competitor(s). In the context of the rate of return challenge process, the competitor must show that they serve at least 85 percent of the census blocks they show on their Form 477 with voice and broadband meeting specific technical standards. Depending upon the percentage of overlap that the competitor can demonstrate, RLECs' support is disaggregated and may even lead to a reduction in support.

In the *NPRM*, it appears that the FCC now believes that unsubsidized competitors lack the incentives to participate in the 100 percent overlap and rate of return challenge processes, and the cost of participating may be too high particularly when no support is going to the competitor and the competitor may only cover a small portion of a study area in conjunction with other competitors. Granite State joins with commenters that agree with the FCC's initial findings that eliminating or reducing high cost USF support that an RLEC receives requires sufficient evidentiary showing as well as FCC consideration given that broadband deployment to rural consumers is at stake.[12] The current 100 percent overlap process and rate of return challenge

[12] See, e.g., WTA Comments at 36 & 38.

process appropriately require both an evidentiary showing and Commission evaluation in order to conclude that an RLEC should have its support eliminated or reduced.

Further, the FCC has not even been through one successful run at a reverse auction for high cost support, so it is premature to assume that it would be more efficient than the current 100 percent overlap process which can be completed in approximately two or three months. There are too many "unknowns" right now about the auction process that need to be analyzed and evaluated as the first-ever Connect America Fund Phase II auction commences. Additionally, the FCC allows for up to six months for auction winners to obtain and submit all required items before the winner can receive funding. Would the rate-of-return incumbent continue to be funded until an auction winner is successfully cleared to receive funding? What if the auction winner defaults, cannot obtain ETC designation or a Letter of Credit? Certainly, an auction would not be administratively simpler. On the contrary, the extremely long time frame required for auctions, or the likelihood that nobody would bid would create a much more complex process. Accordingly, the FCC should not adopt an auction in rate-of-return study areas that have a competitive overlap.

III. Include Carriers With 90 Percent or More 10/1 Mbps In Any New A-CAM Offer

Granite State believes that any future A-CAM offer should be extended to RLECs that have 90 percent or more 10/1 Mbps. ITTA – The Voice of America's Broadband Providers ("ITTA") submitted comments that argued that the FCC should consider permitting legacy carriers with greater than 90 percent 10/1 Mbps deployment to participate in future A-CAM offers – as well as not limiting the next round of A-CAM to just glide path carriers. Granite State agrees with ITTA, in particular with ITTA's reasoning that such carriers should be included

"because chances are great that they have fallen short of 100 percent deployment due to the costliness of deploying to the hardest-to-reach final up to 10 percent of eligible locations."[13] ITTA suggests that the FCC could mitigate some of its concerns with providing support to these carriers by "imposing more stringent buildout obligations on such carriers, as A-CAM support for them should be designed to propel them past the full deployment goal line."[14] Granite State also notes that some carriers, including Granite State, were below the 90 percent threshold when the original offer was made but, due to continued deployment of broadband, have now exceeded that threshold. Imposing the 90 percent threshold in a new offer would then result in penalizing these companies that have been utilizing legacy support to offer broadband to more individuals and businesses within their service areas. Granite State urges the FCC to consider this option for future offers of A-CAM support, as it would allow the Company as well as other near fully-deployed rate-of-return carriers to reach 100 percent deployment where they may otherwise struggle to do so. Further, if the FCC presents an additional A-CAM offer, it should use a challenge process similar to the one adopted for the 100 percent overlap and rate of return challenge process where the competitor has the burden of proof to show that it can provide *voice and broadband* to each census block that it serves. As demonstrated above, only a process that includes both a strong evidentiary showing and Commission evaluation should be used to determine how USF support should be disbursed to support deployment of broadband in rural areas.

IV. Conclusion

For the reasons described herein, the FCC should not change the 100 percent overlap

[13] ITTA Comments at 26.
[14] *Id.* at 27.

process from the existing process which has worked adequately to determine if high cost support should be phased out in a fully competitive study area. The FCC should also keep the competitive threshold at 100 percent, and not reduce it to a lower number as suggested by WISPA. Finally, the FCC should offer A-CAM support to carriers with 90 percent or more 10/1 Mbps broadband deployment to get them to the 100 percent deployment mark quickly. Doing so would further the FCC's goal of deploying broadband to all portions of rural America. If the FCC offers another round of A-CAM funding, it should use the same challenge process but adopt an expedited timeframe for carriers with 90 percent or greater deployment at the time of offer.

Respectfully submitted,

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