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 THE BROADBAND ALLIANCE OF THE MIDWEST IN RESPONSE TO THE NOTICE OF PROPOSED RULEMAKING

Dated: June 25, 2018

The Broadband Alliance of the Midwest

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I. Introduction and Summary

The Broadband Alliance of the Midwest ("BAM")[1] hereby submits these Reply Comments in response to the Comments filed by interested parties on the Notice of Proposed Rulemaking (the "Notice") issued by the Federal Communications Commission ("Commission") in the above captioned proceedings.

There is broad consensus that the cost-based budget is insufficient causing what Chairman Pai describes as "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." A bipartisan group of 63 Senators and 130 members of the House of Representatives sent letters to the Commission stating "the high-cost program has been and remains insufficient." In addition, there is near unanimous consensus in the industry that the budget is neither predictable nor sufficient.

The cost shift associated with the transition to Consumer Broadband only service ("CBOL") needs to be recognized as a significant factor driving the budget shortfall. However, attempting to treat voice and broadband lines similarly would in no way eliminate the significant

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[1] The Broadband Alliance of the Midwest ("BAM") is a consortium of 73 cost-based rural telecommunications carriers serving the States of Iowa, Minnesota, Nebraska, North Dakota and South Dakota. The BAM consortium formed for the sole purpose of giving a voice to Midwestern carriers utilizing rate of return regulation, and receiving support from the HCLS and CAF-BLS mechanisms.

BAM companies have steadfastly provided quality communications services to their communities for many decades, and in many instances for more than a century. Our collective operations cover more than 130,000 square miles of rural Midwestern geography. BAM companies serve in excess of 500,000 voice and broadband subscribers and maintain over 140,000 miles of modern network infrastructure, with more than 70% of that network fiber-based. Our companies employ more than 2,300 local citizens. BAM companies currently have nearly $3B dollars invested in rural communications networks.

costs in providing rural broadband and treating CBOL differently than it is currently treated for jurisdictional separations will not change the underlying costs to provide broadband service.

Comments were filed that suggest the Commission apply the inflationary adjustment by examining inflationary impacts on the various components of the high cost program. Given the shortfalls at issue, given how such adjustments have been applied in other universal service programs in the past, and given the concerns raised above regarding shifts in costs to broadband-only services, BAM opposes this approach and suggests the Commission apply the inflationary adjustment to the high cost budget on a holistic basis after the total funding is first reset at a funding level that meets the Act's sufficiency mandate.

Finally, with respect to the effort to evaluate and set a budget that is sufficient and predictable as required by law, many commenters suggested that the contemplated budget be established for a period of time consistent with the ACAM program. BAM urges the Commission to set its sights on a longer-term view of supporting rural infrastructure. The need for high cost support must extend well beyond 8 years, and indeed perpetually into the future, to meet the national goal of robust broadband in rural areas.

Turning to other potential reforms, BAM reiterates its position that support floors or minimum support thresholds will not be necessary if the Commission proceeds with establishing a budget that is sufficient to fund supported costs under the various program components. Support predictability and support sufficiency are not equivalents, and any use of a floor – even if providing some predictability—must not be seen as a substitute for addressing long-standing and increasing concerns about insufficiency.

The Commission references the Averch-Johnson effect from 1962 in its discussion of promoting the efficient use of resources by rate-of-return carriers and seeks comments on what

option may help to mitigate the alleged inefficiencies of the legacy rate-of-return system. The Commission, however, also recognizes that it has adopted rules to deal with these alleged inefficiencies. BAM agrees with the conclusions as set forth by the Range Telecommunications Companies that the assumptions made by the Averch-Johnson model are not present in the current FCC-RLEC regulatory environment.

Finally, the Commission should decline to modify the process for determining whether a purported unsubsidized competitor overlaps a RLEC high-cost universal service support recipient in 100 percent of the rural study area. In addition, the Commission should abandon its inquiry into whether it should conduct auctions in areas that appear to be 100 percent overlapped according to the Form 477, but where no competitor has come forward demonstrating such overlap. Minimal participation by competitive providers in the established competitive overlap process is not the consequence of a lack of adequate participation incentives, but instead reflects the reality that the business case for facility investment is simply not there for many consumer locations within RLEC service areas.

II. There is broad consensus that the budget is underfunded and insufficient. The Commission must meet the mandates of Section 254 of the Act that support be predictable and sufficient … to preserve and advance universal service.

In the Third Order on Reconsideration, the Commission took much-need and welcomed steps to temporarily mitigate the effects of the budget shortfall as enforced by the Budget Control Mechanism ("BCM"). The Commission took these steps in response to concerns and challenges raised by NTCA that the budget, when executed through the BCM, would not be "sufficient" consistent with section 254(e) and 254(b) (3) of the Act.[2] Granting in part NTCA's petition for

[2] Section 254(e) and 254(b)(3) respectively requires that support be "sufficient to achieve the purposes of this section" and establishes the policy that consumers in rural areas have access to services "reasonably

reconsideration, the Commission found that such large and variable reductions, caused by the budget shortfall and enforced through the BCM, made support not sufficiently "predictable" for affected rate-of-return carriers to engage in the long term planning for the high-speed broadband deployment needed in rural America.[3]

The Commission correctly concludes that the budget in its current form is neither sufficient nor predictable.[4] Rather than adopting NTCA's recommendation to immediately go further than merely addressing the BCM affecting the claims from July 2017 to June 2018, the Commission instead initiated a further examination of whether the current level of support is sufficient and predictable "enough" for carriers serving rural areas.[5] As stated in our initial comments and affirmed now by the record in this proceeding, it is clear that the budget is neither sufficient nor predictable. The BAM companies urge the Commission to act on NTCA's recommendation.[6]

On April 27, 2018, Chairman Pai released a statement after USAC's announcement that the high-cost USF budget control mechanism adopted in 2016 will cut universal service support for small, rural carriers by 15.52 percent over the course of the next year. Chairman Pai said "The prior Administration's budget control mechanism has created constant uncertainty for

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comparable to those services provided in urban areas . . . at rates that are reasonably comparable to rates charged for similar services in urban areas.

[3] NPRM, para. 81.

[4] Id.

[5] Although the Commission has yet to make long-term adjustments to the cost-based high cost budget, Chairman Pai has recently proposed a significant funding increase for the Rural Health Care Program by increasing the funding cap by over 40%. A majority of Commissioners have voted in favor of this proposal. *See* https://docs.fcc.gov/public/attachments/DOC-351349A1.docx and https://www.fcc.gov/document/chairman-pais-rural-health-care-proposal-receives-majority-support

[6] BAM Comments, p. 7.

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."

On May 15, 2018, a bipartisan group of 63 Senators and 130 members of the House of Representatives sent letters to the Commission stating that "the high-cost program has been and remains insufficient…This persistent insufficiency is affecting the ability of smaller rural broadband providers to effectively deliver broadband services in the most rural areas of America."[7] BAM agrees with the assessment provided by Gila River Telecommunications that this insufficiency is significant because "Congress, in the Telecommunications Act of 1996, directed the Commission to ensure the sufficiency of support so that all Americans had access to an evolving level of communications services and reasonably comparable rates.[8] While Congress provided the Commission flexibility to design the support mechanisms, they directed the Commission to ensure those mechanisms provide sufficient support."[9] Gila River's comments are on point in stating; "these letters demonstrate that a large majority of senators and a substantial number of members of Congress believe that the Commission is not fulfilling its statutory obligation."[10]

The record supports that there is also wide consensus in the industry that support for cost-based carriers is neither sufficient nor predictable. WTA, for example, does not believe that the 2011 budget of $2.0 billion for a mechanism that supported a primarily voice and lower-speed broadband network can be deemed reasonable, much less sufficient, to support the 2018

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[7] https://www.fischer.senate.gov/public/_cache/files/cc4e543d-edb8-4dd6-81ae-9f0b0a1c9b15/senate-usf-letter-to-fcc-5152018.pdf and https://cramer.house.gov/media-center/press-releases/cramer-leads-congressional-letter-to-fcc-on-rural-broadband-funding

[8] Gila River Telecommunications, pp. 3-4.

[9] Id.

[10] Id.

predominately higher-speed broadband network. That 2011 budget amount is even less likely to sufficiently support the further broadband speed increases and service upgrades that will be required between now and 2026 to keep reasonably comparable pace with consumer demand and provide an evolving level of universal service.[11] As NTCA observes, we are only on the precipice of substantial demands to come based upon use cases. Keeping pace with demands for higher speeds will determine American competitiveness in a global economy and rural America's ability to remain a critical component of (and even help drive) such success.[12] BAM urges the Commission to consider how vital the broadband infrastructure is and will continue to be to the American economy when considering current and future USF budgets. Similar to WTA's observation that the budget is stuck in a voice-centric, slow broadband speed world, NTCA notes that as our nation has witnessed broadband technologies exploding and innovative new applications driving demand for deployment of even more robust fiber and 5G technologies, the high-cost USF program budget, that is mission-critical for millions of rural Americans, has remained locked at levels largely reflective of plain old telephone service.[13] It is essential for all universal service programs to evolve and keep pace with such changes, as well as for each to be sufficiently sized for the tasks they are assigned by statute.[14]

The Blooston Carriers argue that the budget for RoR legacy carriers has increasingly been squeezed for the past 7 years, which has hurt the ability of these carriers to deploy broadband and maintain their networks, as well as jeopardize existing loan obligations by

[11] WTA Comments, p. 8.

[12] NTCA Comments, p. 4.

[13] NTCA Comments, pp. 9-10.

[14] Id.

limiting reimbursement for already constructed broadband networks.[15] Like Blooston, US TELECOM believes the cap on the high cost program has had a severe economic impact on consumers and broadband providers in rural America, and thus, also supports the Commission fully-funding high cost USF support for the cost-based broadband providers.[16]

FWA suggests that without future relief from the BCM through budget increases, FWA's clients and their customers will be severely impacted.[17] According to FWA, the reductions in high cost support will stifle the ability of FWA's clients to invest in their networks and place significant pressure for increases to rates for broadband.[18]

ITTA, in their comments, recognized that in initiating its rate-of-return budget review in the Budget NPRM, the Commission appropriately hearkened back to the requirements in Section 254 of the Communications Act of 1934, as amended (the Act), that universal service support be "predictable and sufficient . . . to preserve and advance universal service." BAM agrees with ITTA that, unfortunately, the application of the budget control mechanism has had precisely the opposite effect on legacy carriers.[19] ITTA recommends and BAM concurs that the Commission must, pursuant to the statute's requirements as well as sound policy, take decisive action to address the effects of the budget control mechanism beyond the current budget year and fund the legacy mechanisms such that there is no reduction due to the budget control mechanism.[20]

[15] Blooston Comments, p. 5.

[16] USTELECOM Association Comments, p.9

[17] FWA Comments, p. 4.

[18] Id.

[19] ITTA Comments, pp. 11-12.

[20] Id. at p. 13.

Further, ITTA notes that fully funding the legacy mechanisms would lead to a minimal impact on ratepayers.[21]

NTCA has demonstrated that in the absence of any changes to the existing USF budget, RLECs receiving Cost-Based Support could face budget controls that ultimately cut, on average, a quarter (25 percent) of their support, resulting in more than $400 million year-after-year in denied recovery of costs actually incurred in deploying broadband networks in rural America.[22] NTCA correctly concludes that this inability to recover costs already incurred in the furtherance of broadband deployment and operations logically discourages future network investment in at least two ways. First, it creates a new need to conserve cash to pay for investments already made. Second, such reductions have a substantial chilling effect on going-forward investment given the uncertainty of likely larger budget cuts to come.[23] BAM companies appreciate the Commission's action to utilize a stopgap measure to plug the $180M shortfall in the last budget cycle. However, as BAM stated in its initial comments, the industry simply cannot plan for long-term capital additions to network infrastructure based upon the speculative hope of annual infusions of support.[24] To comply with federal law that requires both sufficiency and predictability in support, the Commission should take definitive action to establish a multi-year budget that is sized to accomplish the critical task of eliminating the urban-rural divide of broadband availability and rate comparability over a period of years that reflects the longer-term

[21] Based on ITTA's calculations and using the approximate $180 million dollar impact of implementation of the budget control mechanism during the current budget year as a proxy, it is estimated that fully funding the legacy mechanisms would add a mere six cents to the average monthly USF contribution for a residential household.

[22] NTCA Comments, p. 33

[23] Id. at pp. 24-25.

[24] BAM Comments, p. 5.

nature of the assets that are being deployed.[25] The BAM companies along with NTCA, WTA, Gila River, Blooston, FWA, ITTA, and USTELECOM all agree that the high cost program has been and remains insufficient, and like the members of the House and Senate, urge the Commission to take the necessary corrective action to address the shortfalls in the USF program.

III. The impacts of the CBOL cost shift must be recognized in a sufficient High Cost budget.

In our initial comments, BAM explained the cost shift that occurs in existing separations rules when consumers move from traditional voice or traditional voice/broadband services to Consumer Broadband Only Loop ("CBOL") service. Since CBOL is used solely for Interstate broadband service, it is logical that the total loop cost is allocated 100 percent to the Interstate Jurisdiction.[26] BAM continues to argue that it is illogical that this cost shift is then ignored in the determination of a sufficient budget since the CBOL jurisdictional cost shift is a substantial driver of the budget shortfall—and it will only drive it further over time.[27]

Attempting to treat voice and broadband lines similarly would in no way eliminate the significant costs in providing rural broadband—it just moves costs into different "buckets" that still then require recovery either from the consumer or USF. Treating CBOL differently than it is currently treated for jurisdictional separations will not change the underlying costs to provide broadband service.[28] As NTCA recognizes, under the alternative approach described in the

[25] Id.

[26] Id. at p. 6.

[27] FWA demonstrated for example that support for voice service, BLS and HCLS is a combined $68 support for one company. For the same company, the support for DOB is $106. FWA, Comments, Attachment A, p. 6.

[28] NPRM, at para 164. The Commission seeks comment on whether there is a way to treat voice and broadband lines similarly that could be incorporated into the CAF BLS program and if so, if this approach would minimize the effect of the BCM.

NPRM, only 25 percent of broadband-only loop costs would be allocated to common line.[29] Such an approach could potentially leave 75 percent of broadband-only loop costs to be assigned to interstate special access.[30] BAM believes this approach would be harmful for cost-based carriers in their attempts to offer standalone broadband service at reasonably comparable prices and diminish any prospects to recover broadband cost that have been incurred.[31] Such an approach would mask the massive USF shortfalls by shifting loop costs to interstate special access, which simply end up increasing special access rates and substantially increasing the rates to consumers for broadband. [32] Any migration to such an alternative approach must take into account these concerns, and ensure such “masking” of costs does not end up with rates paid by rural Americans that are unreasonably high and hardly comparable to those in urban areas.

CAF-BLS, with its theoretical support (i.e., before the impact of the Section 54.901(f) budget control mechanism) of 100 percent of the broadband loop costs that are allocated to the interstate jurisdiction, is designed to encourage the deployment and extension of higher and higher speed broadband networks to meet these consumer demands and to develop the appropriate incentives for carriers to deploy modern broadband-capable networks.[33] BAM urges the Commission to recognize the legitimate jurisdictional cost shift caused by the transition to CBOL by sufficiently funding the CAF-BLS budget. Not acknowledging this legitimate shift

[29] NTCA Comments, pp. 66-67

[30] Id. at p. 67

[31] Such an approach would be inconsistent with the Commission’s actions in recent dockets, including WC-Docket No. 17-84 released June8, 2018 whereby the Commission removed regulatory barriers for carriers seeking to transition from legacy networks and services to broadband networks and services and to encourage deployment of next-generation networks.

[32] NCTA Comment, p. 67; BAM Comments, p.7.

[33] WTA Comments, p.45 and *Rate of Return Order*, para. 87.

will result in non-recoverable and stranded CBOL costs, which will discourage and impair the broadband deployment that is otherwise desired.[34]

IV. The suggestion of the need for support floors is an acknowledgment that support levels are insufficient

The Commission sought comment on establishing a threshold level of support not subject to the BCM.[35] Many interested parties provided comments on appropriate levels of threshold support for HCLS and CAF-BLS participants; however the BAM companies reiterate our initial comments that support predictability is not a substitute for support sufficiency. If the Commission satisfies the statutory requirement of a sufficient budget, then minimum support thresholds should not be necessary.[36] Simply put, some fraction of sufficient is not sufficient. We again observe that the Commission has instituted multiple levels of cost control and recently tightened its policy positions on permissible expenses. Now, the future High Cost budget must be sufficient to allow for the full funding of the costs that are permissible under the High Cost program. A budget sufficient to fund supported costs would eliminate the need for a discussion of support minimums that is only necessary in the underfunded environment that currently exists.

V. The inflationary adjustment should be applied to the entire High Cost budget, not to particular High Cost budget components.

As BAM noted in its initial comment filing, there is no reason to add granular complexity and administrative layers to efforts to make the High Cost program budget sufficient. The Commission must view the sufficiency of the high cost budget on a holistic basis.[37] BAM

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[34] Id., at p. 46.

[35] NRPM, paras 149-154.

[36] NPRM, para. 109

[37] BAM comments, P. 13

opposes therefore those comments suggesting that an inflationary adjustment should apply differently to various components of the High Cost budget.[38] While BAM concurs that various types of costs are impacted differently by inflation, we caution against making the inflationary adjustment process overly complex or difficult to administer. There are a myriad of various cost categories supported within the High Cost program (and, for that matter, within all Universal Service programs). Attempts to isolate various cost components and apply the inflationary adjustment uniquely to each will only add complexity and granularity to a process that is unlikely to yield a more predictive result than simply applying it to the entirety of the established budget.

The Commission recently demonstrated a preference for this administratively efficient approach when applying an inflationary adjustment to increase the budget of the Rural Health Care program[39] and it has done so as well for the other universal service programs.[40] The precedent is there, with high-cost USF representing the only program at this point "on the outside

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[38] Concerned Rural LECs Comments, p. 5

[39] https://docs.fcc.gov/public/attachments/DOC-351633A1.pdf

[40] See Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6; A National Broadband Plan for our Future, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18781-84 (2010), at ¶¶ 35-40 (increasing the E-Rate budget by the "same index the Commission uses to inflation-adjust revenue thresholds used for classifying carrier categories for various accounting and reporting purposes and to calculate adjustments to the annual funding cap for the high-cost loop support mechanism," but ironically not for purposes of increasing the high- cost USF budget itself); Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 (2014); Modernizing the E-rate Program for Schools and Libraries, Connect America Fund, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538 (2014) (increasing the authorized E-rate budget by $1.5 billion annually); Lifeline and Link Up Reform and Modernization et al., WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4111 (2016), at ¶¶ 400-403 (increasing the target Lifeline budget to $2.25 billion annually and attaching an inflationary factor to that budget target).

looking in." Certainly, there are various types of costs within each USF program, each impacted differently by inflation. However, the Commission has consistently chosen to apply the GDP-CPI index to the entire budget for the requisite period. BAM supports that approach in determining the appropriate inflationary adjustment for the entire High Cost program. We further note that the capacity of the budget that would be increased by any inflationary adjustment is not the determinant factor in making disbursements from the fund. Distributions are determined by theoretical expense levels, in the case of the ACAM/Alaska participants, or permissible actual expenses in the case of the cost-based HCLS and CAF-BLS program participants. Therefore, while the inflationary adjustment is integral to establishing a sufficient budget capacity, it will not cause unsupported distributions from the various High Cost programs, and, if anything, it may help the Commission address other underfunded priorities within the High Cost program as well.

VI. The need for High Cost funding extends far beyond 8 years, and the critical need to sustain rural networks for future generations of consumers must be considered in the Commission's High Cost budget plans.

Several parties commented that the cost-based High Cost budget should span a period of time in concert with the initial ACAM support program. For example, NTCA refers to a "Budget Term" through a minimum period of 2026.[41] WTA suggests that sufficient funding is needed through the current ACAM funding period[42] and also provides an exhibit proposing specified funding levels through 2026.

[41] NTCA Comments, page 32

[42] WTA Comments, page 25 and Exhibit A

BAM urges the Commission to recognize in its contemplated funding solution the need for an ongoing and forward-looking financial commitment to providing broadband networks in high cost areas. Regardless of how support amounts are determined and disbursed over the near term of the nascent ACAM program, the need for High Cost support should be recognized as an ongoing commitment to making robust broadband services sustainable for all rural consumers into the foreseeable future.

The Commission's current focus on securing sufficient funding to expand deployments of broadband networks in high cost areas is admirable and BAM welcomes those efforts. However, we must never lose sight of the ongoing funding needs for these critical pieces of infrastructure beyond the initial deployment. Network electronics, and even buried fiber assets, have a finite useful life. Exactly like highways, bridges and other critical national infrastructure systems, ongoing investment in rural broadband will be necessary to ensure that the nation's communications network continues to be modern, robust and well maintained. There is little point in making a monumental effort to deploy rural broadband networks if after a few years the funding declines and the networks deteriorate as a result. Thus, while a budget estimate through 2026 may represent a starting point, it is only that—and predictability requires an appropriate baseline budget, increased on an ongoing basis by an appropriate inflationary factor, as BAM recommends above.

VII. The theoretical Averch-Johnson effect is not a reasonable rationale for failing to fully fund the cost-based support budget

The Commission seeks comment on how to mitigate the alleged inefficiencies of the legacy rate-of-return system, such as the incentive for rate-of-return companies to over-invest

capital to increase profits.[43] By reference to the Averch-Johnson effect, the Commission suggests that rate-of-return regulation provides incentives for companies to operate inefficiently by padding operating expenses and over-investing in capital projects to increase profits.[44]

BAM agrees with the conclusions as set forth by the Range Telecommunications Companies that the assumptions made by the Averch-Johnson model are not present in the current FCC-RLEC regulatory environment and that, even if they were, there are several mitigating factors that would reduce or eliminate the effect.[45] Further, according to Range, the budget control mechanism is not designed to surgically fix a carrier-specific investment decision, but one that unpredictably reduces support for a large group of carriers to keep the overall budget equal to an arbitrarily established cap.[46]

BAM companies have consistently demonstrated efficient broadband deployment and routinely operate below the multiple levels of cost control established by the Commission.[47] BAM companies already adhere to the multiple Commission investment and expense caps and limitations identified by NTCA as the following: (1) operating expense limits adopted in 2016; (2) corporate operations expense limits expanded in 2011; (3) capital investment limits adopted in 2016; (4) cost benchmarks below which support is not available; (5) competitive overlap

[43] NPRM, para. 154.

[44] Id. para 139. According to FN 352, the tendency to over invest in capital is referred to as the Averch-Johnson effect. (December 1962). ("The emphasis on cost recovery in rate of return regulation is the source of the concern that companies may not operate efficiently (2). For example, if the regulator allows a rate of return that is higher than what the company actually needs to ensure that shareholders continue to provide capital for investment, the company could increase its returns to shareholders by making unnecessary investments (if the regulator does not catch the company doing so). This is called the Averch-Johnson effect (3).").

[45] Range Comments, p. 7.

[46] Id.

[47] BAM Comments, p. 11.

measures adopted in 2011 and enhanced in 2016; (6) a per-line cap on support adopted in 2011; (7) an overall budget control mechanism adopted in 2016; (8) a rate floor adopted in 2011; (9) geocoded buildout obligations adopted in 2016; and (10) greater direction with respect to what kinds of expenses are now recoverable via USF. [48] Given these numerous caps and limitations, and the constant threat of further regulatory changes present in relation to long term capital investment decisions, the impacts of an Averch-Johnson effect have either been eliminated or are inconsequential at best. Further options to elect model-based support are unlikely to be more effective than the caps and limitations previously adopted.

The costs to which the investment and expense limits and caps are applied are, as NTCA describes, not "made-up" costs, but rather actual costs demonstrably incurred in deploying networks and delivering services to consumers in rural America. Further, according to NTCA, "Despite actually incurring these costs in support of voice and broadband…the support…is then crammed down after the fact to fit Cost-Based Support within an amount of funds then-available, resulting in the actual loss of hundreds of millions of support to compensate for work already completed toward the mission of universal service."[49]

The Commission, through its many investment and expense caps and limitations, has likely eliminated any potential Averch-Johnson effect. BAM urges the Commission to focus on the needs of cost-based RLECs for broadband deployment and upgrades, affordable broadband services, and for reimbursement for the costs already incurred in advancement of the universal service mission. BAM, therefore, urges the Commission to establish and commit to a sufficient and predictable cost-based carrier budget.

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[48] Report and Order, para 10-61.

[49] NTCA Comments, p. 28.

VIII. There is no policy basis for modifying the 100 percent competitive overlap provision.

The Commission seeks comment on whether to replace the 100 percent overlap process by which support is eliminated for legacy rate-of-return study areas that are fully served by unsubsidized carriers with a different mechanism.[50] More specifically, in lieu of the current process to determine whether a study area is 100 percent overlapped, the Commission sought comment on using an auction mechanism to award support to either the incumbent LEC or the competitor(s) in areas where there is significant competitive overlap.[51]

The BAM Companies agree with NTCA that the Commission should decline to modify the process for determining whether a purported unsubsidized competitor overlaps a RLEC high-cost universal service support recipient in 100 percent of the rural study area.[52] BAM Companies believe that competitive carriers had significant incentive to participate in the Commission's 100 percent overlap process by eliminating universal service support received by carriers with whom they compete. BAM carriers submit the likely reason that competitive carriers cannot replicate the service in most rural ILECs areas is that there is no business case to serve high-cost rural areas. In that regard, BAM agrees with the Blooston Rural Carriers argument that 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.[53] In these cases, there is no 100 percent overlap, and thus, the carriers do not meet the 100 percent overlap

[50] NPRM, para. 160.

[51] Id at para 162

[52] NTCA Comments, p. 57.

[53] Blooston Comments, p. 16.

criteria. Further, as WTA points out, cable operators that compete with RLECs limit their service to relatively densely populated towns, villages, and other incorporated communities in rural America.[54] These providers generally make little or no effort to extend their networks and services into the more sparsely populated outlying countryside that would enable them to serve 100 percent of most RLEC study areas.[55]

As NTCA recognizes, given that these providers presumably have the evidence on hand to assess and report on Form 477 in the first instance where service can and cannot be provided, any failure to post in the 100 percent competitive overlap process is more likely driven by an inability to make the required showing.[56] If an alleged unsubsidized competitor does not have sufficient "incentive" to invest and participate in the Commission's challenge processes (including cooperation with nearby competitors that could be easily identified by looking at the Commission's Form 477 maps), it is unlikely to have the perseverance necessary to deal with the unique, difficult, and never ending challenges of providing voice and broadband telecommunications services in rural areas.[57]

The Commission should therefore abandon its inquiry into whether it should conduct auctions in areas that appear to be 100 percent overlapped in Form 477 data, but where no competitor has come forward demonstrating such overlap.[58] The Commission's 100 percent competitive overlap process has been opened and closed twice over now, and will recur again in a few years. There is no need to create yet another type of process simply due to the lack of

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[54] WTA Comments, p. 37.

[55] Id.

[56] Id. at p. 58.

[57] WTA Comments, p. 38.

[58] NPRM, para. 162.

carriers demonstrating interest in providing voice and broadband service throughout Rural ILECs service areas.

BAM agrees with NTCA that any proposal to utilize an auction mechanism to award support where "significant" competitive overlap is found are solutions in search of problems.[59] If the Commission can simply choose to modify its process in an effort to "find competitors," thereby eliminating an RLEC's support, or to conduct an auction, BAM agrees with WTA that there is probably no more effective way to ensure that most broadband investment, deployment, and upgrades will come to a near or complete halt in study areas for which such auctions appear somewhat likely to be conducted.[60]

BAM further concurs with WTA that the critical consideration with respect to any unsubsidized competitor challenge process should not be the current budget issues, but rather whether an unsubsidized competitor (i) can provide reliable voice and broadband services that are of comparable quality to those provided by an RLEC receiving high cost support; and (ii) can readily offer increased broadband speeds in a scalable manner in response to increased customer bandwidth demands.[61] Absent any previous finding to the contrary, the Commission should conclude its inquiry into competitive overlap issues and focus on providing RLEC ILECs with sufficient and predictable support so RLECs can focus on providing broadband to their subscribers at rates comparable to their urban counterparts.

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[59] NTCA Comments, p. 59.

[60] WTA Comments, p. 40.

[61] Id., p. 35.

IX. Conclusion

BAM urges the Commission to act quickly on this proceeding. There is broad based support for increasing the cost-based high cost budget to ensure predictable and sufficient support now and into the future. From Chairman Pai, to members of Congress and the Senate, to the overwhelming majority of parties submitting comments in this proceeding, the path is clear. The Commission should take definitive action to establish a multi-year budget that is sufficient to accomplish the critical task of eliminating the urban-rural divide of broadband availability and rate comparability. The budget must recognize on-going funding needs and should be planned over a period of years that reflects the long-term nature of the assets that are being deployed and recognizes the ongoing investment required to sustain the nation's critical communications infrastructure. As the Commission has previously observed, access to high-speed broadband in rural areas can create economic opportunity, enabling entrepreneurs to create businesses, immediately reach customers throughout the world, and revolutionize entire industries.

Attempting to treat voice and broadband lines similarly would not eliminate the significant costs of providing rural broadband. Treating CBOL costs differently than its current jurisdictional separation treatment will not change the underlying costs to provide broadband service. BAM urges the Commission to recognize the legitimate jurisdictional cost shift caused by the transition to CBOL by sufficiently funding the CAF-BLS budget.

The Commission sought comment on how to mitigate the alleged inefficiencies of the legacy rate-of-return system especially those caused by the Averch-Johnson effect. Yet, through the multiple Commission investment and expense caps and limitations, the Commission itself has recognized that such inefficiencies are now minimal if not eliminated.

Recognizing that such inefficiencies have almost certainly been eliminated and additional costs are unlikely to be squeezed from the budget, the Commission sought comment on modifying its 100 percent competitive overlap process. The thought was that if only there were more incentives for competitive carriers to come forward, the Commission could eliminate support in areas where such overlap exists, thereby squeezing additional cost from the budget. In reality, very few of these areas exist and little or no meaningful reduction of costs from the budget will occur from such an effort.

The BAM companies appreciate the opportunity to voice our views on the future high cost program budget. We look forward to being included in the ongoing conversation and working with the Commission and other industry participants to find the best path forward.

Dated: June 25, 2018

The Broadband Alliance of the Midwest

Iowa Companies

Alpine Communications, L.C.
Bernard Telephone Company, Inc.
Cascade Communications Company
Citizens Mutual Telephone Cooperative
Clear Lake Independent Telephone Company
Communications 1 Network, Inc.
CML Telephone Cooperative Association of Meriden, IA
Farmers Mutual Telephone Company of Stanton, IA
Griswold Cooperative Tel Co
Heart of Iowa Communications Cooperative
Huxley Communications Cooperative
IAMO Telephone Company
Kalona Cooperative Telephone Company
Keystone-Farmers Cooperative Tel Co
La Porte City Telephone Company

Lehigh Valley Cooperative Telephone Association
Lost Nation – Elwood Telephone Company
Marne Elk Horn Telephone Company
OmniTel Communications, Inc.
Palmer Mutual Telephone Company
Panora Communications Cooperative
Premier Communications, Inc.
The Preston Telephone Company
River Valley Telecommunications Cooperative
South Slope Cooperative Company
United Farmers Telephone Company of Everly, Iowa
Webster Calhoun Cooperative Telephone Association
Winnebago Cooperative Telecom Association

Minnesota Companies
The Albany Mutual Telephone Association
Consolidated Telephone Company
Emily Cooperative Telephone Company
Farmers Mutual Telephone Company
Garden Valley Telephone Company
Paul Bunyan Communications
West Central Telephone Association
Woodstock Communications

Nebraska Companies
Arapahoe Telephone Company
Benkelman Telephone Company, Inc.
Cozad Telephone Company
Diller Telephone Company
Glenwood Telecommunications, Inc.
The Hamilton Telephone Company
Hartington Telecommunications Company, Inc.
The Hemingford Cooperative Telephone Company
Hershey Cooperative Telephone Company
Henderson Cooperative Telephone Company
Northeast Nebraska Telephone Company
Pinpoint Communications, Inc.
Plainview Telephone Company, Inc.
Southeast Nebraska Communications, Inc.
Stanton Telecom, Inc.
Three River Telco

North Dakota Companies
BEK Communications Cooperative
Consolidated Telcom
Dakota Central Telecommunications Cooperative
Dickey Rural Telephone Cooperative
Northwest Communications Cooperative
Polar Communications Mutual Aid Corporation
Red River Communications
Reservation Telephone Cooperative
SRT Communications, Inc.
West River Telecommunications Cooperative

South Dakota Companies
Alliance Communications Cooperative, Inc.
Golden West Telecommunications Cooperative, Inc.
Interstate Telecommunications Cooperative, Inc.
Kennebec Telephone Company, Inc.
Midstate Communications, Inc.
RC Technologies
Santel Communications Cooperative, Inc.
TrioTel Communications, Inc.
Valley Telecommunications Cooperative Association, Inc.
Venture Communications Cooperative
West River Cooperative Telephone Company

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