

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of
Connect America Fund

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WC Docket No. 10-90

**COMMENTS OF
THE USTELECOM ASSOCIATION**

The USTelecom Association (USTelecom)¹ is pleased to submit these comments on the Commission's Notice of Proposed Rulemaking regarding the Rate Floor (Rate Floor NPRM & Order).² In the Rate Floor NPRM and Order the Commission issued an Order freezing the current Rate Floor and a Notice of Proposed Rulemaking considering questions about what role the rate floor should have for rural carriers going forward. Although the implementation of phased in rate floor was an attempt to reconcile differing state laws and policies affecting local rates with the rise to a high of \$20.46 in 2014, the rate floor has become a regulation that imposes high costs on rural carriers without any corresponding benefit. USTelecom applauds the Commission's issuance of an order in this proceeding to freeze the rate floor at \$18 to coincide with the minimum amount that Rural Local Exchange Carriers (RLECs) are required to charge for local telephone service to avoid losing USF support. Now the Commission should take a serious look at whether it should change the current methodology or eliminate the rate floor and

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.

² *In the Matter of Connect America Fund*, Notice of Proposed Rulemaking and Order, WC Docket No. 10-90, FCC 17-61 (May 18, 2017) (*Rate Floor NPRM & Order*).

its accompanying reporting obligations. USTelecom provides its thoughts herein on the variety of questions the Commission asked about various moves it could make to improve the current rule.

One such question is whether the FCC should allow RLECs to charge a rate that is one standard deviation below the average urban rate. When the rate floor was established it was based on a national average of urban rates for fixed local voice service.³ At that time, several of the rural trade associations sought reconsideration of the Commission's decision to base the rate floor on an average of urban rates, and suggested instead the Commission base its rate floor on statistical analyses, with the actual floor based (for example) on one or more standard deviations below the average.⁴ The rural associations explained at the time how use of a statistical measure such as the standard deviation would be a more accurate identifier of those carriers whose rates are so-called "artificially low" or beyond reasonable comparability.⁵ As the petitioners accurately explained that while arithmetic averages can be influenced unduly by the presence of outliers, the standard deviation method accommodates favorably a distribution of data across a range.⁶ Furthermore, in general it simply makes sense to USTelecom members that the rate floor should be set at a local rate that is below the urban rate because the calling scope in rural areas is generally lower and customers must make a toll call to reach the larger urban areas, whereas an

³ See *Connect America Fund*, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 9-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service – Mobility Fund, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) ¶¶ 237-238 (*ICC/USF Order*). See also 47 C.F.R. § 54.318.

⁴ See *Petition for Reconsideration and Clarification of NECA, OPASTCO and WTA*, WC Docket No. 10-90, at 13-14 (filed Dec. 29, 2011) (*Rural Association PFR*) and *Petition for Reconsideration of NECA, NTCA-The Rural Broadband Association, Eastern Rural Telecom Association and WTA-Advocates for Rural Broadband*, WC Docket No. 10-90, at 1-3 (filed Aug. 4, 2014) (*Rural Association Phase-In PFR*).

⁵ *Id.*

⁶ *Id.*

urban customer pays just the local rate. Also the economic conditions in rural areas need to be factored in because the income level in these areas are generally lower; and no determination regarding how to utilize the urban rate should be made without looking at income levels in a particular area. As noted by others in this docket, there needs to be careful consideration in balancing the need for regulation and the imposition of cost burdens on rural consumers.⁷ As such, in working through this careful balance, the Commission should consider, when determining the “urban rate,” the rates offered by competitive carriers, which include wireless, WISP and VOIP. Many wireless providers offer standalone voice at under \$20.00. Consumers in urban areas have many choices that are less expensive than the tariffed legacy ILEC rates and list price for voice from cable companies.

The FCC also asks whether it should replace the single, national rate floor with state or regional rate floors. At a minimum, USTelecom members do not want the floor to be established at the state level because states are already intimately involved in local rate setting. Instead, USTelecom supports more coordination, in general, between the state and federal programs. Encouraging more coordination would ensure there is predictable and sufficient funding to meet the universal service goals for voice and broadband. The state and federal coordination should be more of a partnership than it is now. The old model where states are responsible for rate setting without coordination at the federal level other than to not burden the USF no longer makes sense. For example, as it stands now the FCC has unilaterally determined that the states must provide additional funding to support universal service by establishing the Budget Control Mechanism (BCM), however, the BCM has reduced the rate of return carriers support by \$173M

⁷ Comments of NTCA, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92 (filed May 12, 2016) at 31-34 and Petition for Reconsideration and/or Clarification of NTCA-The Rural Broadband Association, *In the Matter of the Connect America Fund, et al.*, WC Docket Nos. 10-90 and 14-58 and CC Docket 01-92 (filed May 25, 2016) at 11.

or 13% which places more financial burden on the states to make up the difference to ensure companies can meet Universal Service goals. Such lopsided policy making without sufficient coordination does not benefit either the state or federal agencies and least of all the rural carriers.

Ultimately, however, USTelecom supports the elimination of the rate floor altogether, because the rate floor penalizes rural customers without any real benefit to the overall size of the fund. This hardly seems to be a benefit to the overall program that encourages the adoption of telephone and broadband throughout the country. Indeed, the continued increase in costs is inconsistent with the direction of section 254(b) of the Communications Act's stated purpose to ensure that rates are just and reasonable as well as to advance universal service in the highest cost areas of the country.

While considering elimination of the rate floor, the Commission should also investigate the drivers for the HCLS reduction. In many cases, the HCLS penalty was a result of companies not being able to meet the local rate benchmark due to state issues such as tariff filing requirements. Many other companies recognized that the increase in the local rate would negatively impact the customer and elected to forgo the USF support. When this happened, the HCLS reduction for an individual company was not reallocated to that company to encourage broadband investment by that company, but was instead reallocated to the overall CAF BLS program leaving rate of return electing RLECs who were trying to give their customers a cost savings without the support they so sorely need. While additional funding for CAF-BLS is absolutely needed due to the current 13%, \$173M annual budget shortfall, it should not come from the companies that need the funding to meet the historic obligation of providing voice services in rural high cost areas. The Commission should be encouraging carriers in lower-rate areas to invest in broadband deployments and upgrades, rather than imposing unnecessary

reductions in HCLS based on voice service rates that are lower than the new rate floor but still within a reasonable range of the urban average.

In reality, there are very few benefits to the rate floor. Costs are significant in that it creates a loss of HCLS, requires tariff filings at state level, the expense of regulatory consulting fees and an additional compliance filing at FCC. All of these regulatory roadblocks only serve to create higher costs to customers in rural areas where income is already lower and costs are higher.

USTelecom overall supports elimination of the rate floor, however, assuming the FCC determines to keep the rate floor, its use could be made less of a burden on carriers if the rate floor were calculated with some other methodology than at the exchange level. Use of the exchange level only serves to complicate the filing. One possible solution could be to use a company's highest local rate in the state which would serve as a sufficient marker. In addition, carriers need time after a new rate floor has been set to implement it, in part because carriers face impediments from state commissions. For example, in Texas, the cooperatives that are partially deregulated need a minimum of 4 months-notice in order to change local rates. The February release of the Urban Rate Floor does not provide sufficient time to change local rates. For example, in some states, RLECs have to initiate state rate cases or other proceedings to allow them to increase their local voice rates prior to a rate floor change in order to be in compliance. Not only are these state proceedings expensive and time-consuming, but also they create concerns and anger among customers that they may soon face yet another rate increase for their voice service.

The Commission has also asked, as an adjunct to these rate floor questions, what actions could the FCC take to reduce ongoing administrative and compliance costs on rural telephone

companies, state commissions, the FCC, NECA and USAC. USTelecom supports the Commission in its efforts to, in general, address issues in a timely manner, reduce reporting requirements in all forms such as FCC Form 481, minimize regulatory proceedings targeting rate of return companies, conduct cost benefit analysis of all new rules, and exclude automatically rate of return companies from any new reporting requirements until such time as the true cost benefit of the rules, when applied to larger carriers, can be truly evaluated.

For the reasons discussed herein, the Commission should eliminate the rate floor or in the alternative, at a minimum make the changes suggested herein to ensure that the rate floor has the desired effect and does not simply increase burdens for carriers.

Respectfully submitted,
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July 10, 2017