

In the Matter of )  
 )  
Connect America Fund ) WC Docket No. 10-90

NCTA – The Internet & Television Association (NCTA) submits these comments in response to the Commission’s Notice of Proposed Rulemaking in the above-referenced proceeding seeking comment on the “rate floor” imposed on rural local exchange carriers (LECs) that receive high-cost support.<sup>1</sup> For the reasons explained below, the current rule “is built on a solid premise”<sup>2</sup> and some form of the rate floor rule should be retained.

It is inappropriate to provide federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability. Doing so places an undue burden on the Fund and consumers that pay into it. Specifically, we do not believe it is equitable for consumers across the country to subsidize the cost of

<sup>3</sup> *In re Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17750, ¶ 236 (*CAF Order*) (“Data submitted by NECA summarizing residential R-1 rates for over 600 companies — a broad cross-section of carriers that typically receive universal service support — show that approximately 60 percent of those study areas have local residential rates that are below the 2008 national average local rate of \$15.62. This distribution plot shows that most rates fall within a five-dollar range of the national average, but more than one hundred companies, collectively representing hundreds of thousands of access lines, have a basic R-1 rate that is significantly lower.”).

service for some consumers that pay local service rates that are significantly lower than the national urban average.<sup>4</sup>

To address this problem, the Commission adopted a rule precluding any rural LEC from receiving high-cost support for the difference between a national rate floor based on the average rate in urban areas and any lower rate charged by that LEC.<sup>5</sup> As noted by Commissioners Clyburn and O’Rielly, labeling this rule as a “rate floor” is something of a misnomer; it is really a limitation on the subsidies made available to carriers.<sup>6</sup>

As the Commission explained at the time, such an approach is wholly consistent with the statutory principle that rates in rural areas should be “reasonably comparable” to rates in urban areas. Specifically, the Commission stated that Congress did not intend to “create a regime in which universal service subsidizes artificially low local rates in rural areas when it adopted the reasonably comparable principle in section 254(b); rather, it is clear from the overall context and structure of the statute that its purpose is to ensure that rates in rural areas not be significantly *higher* than in urban areas.”<sup>7</sup>

The *Notice* seeks comment on a number of possible justifications for eliminating the rate floor, but none are convincing. For example, the Commission suggests that the current rule negatively affects rural consumers and could cause some consumers, particularly older Americans, to lose voice service completely.<sup>8</sup> As an initial matter, no evidence is cited in the *Notice* demonstrating that the current rule has caused any rural LEC customer to lose access to

---

<sup>4</sup> *Id.* ¶ 237.

<sup>5</sup> 47 C.F.R. § 54.318(b).

<sup>6</sup> *Notice*, Dissenting Statement of Commissioner Mignon Clyburn (Clyburn Statement) (“Carriers could charge less than this amount but they would be unable to recover the difference from the universal service fund.”); O’Rielly Statement (“To be clear, the policy *does not* mandate higher rural telephone rates and the Commission is not engaging in rate regulation.”).

<sup>7</sup> *CAF Order*, 26 FCC Rcd at 17750, ¶ 235.

<sup>8</sup> *Notice* ¶ 8.

voice service. Indeed, given the availability of competitive options for voice service, there is reason to believe that any harms attributable to the rate floor may be quite limited. Moreover, eliminating the rule would skew competition in rural America by subsidizing rate reductions for one type of carrier – rural LECs – but not for their competitors.

Furthermore, even if some rural LEC customers experience higher rates than they did previously (i.e., rates that are reasonably comparable to the rates paid in urban areas), eliminating the rule and providing additional subsidies would come at the expense of consumers nationwide, including low-income customers in urban areas. As explained by Commissioner O’Rielly, “there is a basic level of fairness expected before consumers throughout the nation contribute to cover the lower rates offered in more rural parts of America.”<sup>9</sup> Given the Commission’s prior finding that Congress was concerned with preventing higher-than-average rates, not subsidizing lower-than-average rates, the purported harm to some rural LEC customers is not a sufficient reason to eliminate the rate floor rule to the detriment of ratepayers generally.

The *Notice* also asks whether additional high-cost support should be provided to rural LECs because median income levels are lower in rural areas than they are in urban areas.<sup>10</sup> Separately, Commissioners Clyburn and O’Rielly have asked for feedback on whether it would make sense to introduce means-testing into the high-cost program.<sup>11</sup> For a variety of reasons, the Commission should decline to include the income level of a particular geographic area as a relevant factor in determining how much high-cost support that area receives.

---

<sup>9</sup> O’Rielly Statement; *see also* Clyburn Statement (“extremely low voice service rates” charged by some rural LECs “resulted in shifting the cost of service from the people who were actually receiving the service onto other ratepayers nationwide, including those who are least able to afford it.”).

<sup>10</sup> *Notice* ¶ 9.

<sup>11</sup> FCC Blog, Commissioners Michael O’Rielly and Mignon Clyburn, *Would Means-Testing Bring More Efficiencies to the High-Cost Program?* (May 31, 2017), <https://www.fcc.gov/news-events/blog/2017/05/31/would-means-testing-bring-more-efficiencies-high-cost-program>.

Identifying geographic areas as low-income (and therefore worthy of more support) or high-income (and therefore worthy of less support) ignores critical information, such as the range of income levels for residents of any particular area or cost-of-living differences among different communities. For example, a resort community may have a high average income, but still have many residents that serve the resort community and earn below-average incomes. At the other extreme, a community may have a low average income but also a below-average cost of living. In both examples, simply comparing average incomes for the communities provides an incomplete picture of whether subsidies are necessary.

Given this variety of circumstances, it seems likely that introducing an income factor into the distribution of high-cost support would simply add complexity and create new situations where the Commission would either be overspending or underspending to achieve its universal service goals. The better approach – at least in the absence of fundamental reform of the treatment of voice services within the high-cost support program, as discussed below – is to retain the current framework, which provides high-cost support to ensure that all Americans, regardless of income level, are offered reasonably comparable rates, while separately providing additional Lifeline subsidies to qualified low-income individuals. While that approach may result in some unnecessary high-cost subsidies, as suggested by Commissioners Clyburn and O’Rielly,<sup>12</sup> it does so because it is designed to minimize the number of Americans that are unable to afford service.

---

<sup>12</sup> O’Rielly/Clyburn Blog (“[W]e should end the practice of spending scarce USF high-cost support to illogically subsidize the cost of communications services for very rich people who happen to live in the more rural portions of our nation.”).

In addition to raising questions about whether to retain the rate floor rule, the Commission also seeks comment on potential changes to the calculation of the floor.<sup>13</sup> While NCTA does not necessarily object to the Commission revisiting the question of how to calculate the rate floor, the *Notice* does not provide the critical information necessary to assess the two specific alternatives that have been identified. One option the Commission suggests is to set the floor one standard deviation below the average urban rate, but it does not identify what that rate would be or how it compares to the current approach.<sup>14</sup> Similarly, the Commission seeks comment on the possibility of using state or regional rate floors, but again it provides no information on what those floors would be and how they compare to the current approach.<sup>15</sup> Without the information necessary to determine the consequences of changing the manner in which the rate floor is calculated, it is not possible for the public or the Commission to assess the costs and benefits of changing the rule.

Finally, as it considers whether to increase the amount of high-cost support that is provided to keep rural LEC voice rates at “reasonably comparable” levels, the Commission also should be considering whether the time has come to begin phasing out support for wireline voice services in some areas. Under Section 254(c)(1), supported services are those services that “have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers.”<sup>16</sup> Based on the most recent data, less than half of residential customers still subscribe to wireline voice services, nowhere near the “substantial majority”

---

<sup>13</sup> *Notice* ¶ 10.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> 47 U.S.C. § 254(c)(1).

contemplated by the statute.<sup>17</sup> Given the prevalence of, and preference for, wireless voice services exhibited by a substantial majority of American consumers, it may be time to consider ending the use of high-cost subsidies to suppress wireline telephone rates in areas where consumers primarily rely on wireless service.

For all the reasons demonstrated in these comments, NCTA strongly encourages the Commission to retain the rate floor requirement.

Respectfully submitted,

**/s/ Steven F. Morris**

Steven F. Morris  
Jennifer K. McKee  
NCTA – The Internet & Television  
Association  
25 Massachusetts Avenue, NW – Suite 100  
Washington, D.C. 20001-1431

July 10, 2017

---

<sup>17</sup> Stephen J. Blumberg and Julian V. Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July–December 2016*, National Center for Health Statistics (rel. May 2017) (“The second 6 months of 2016 was the first time that a majority of American homes had only wireless telephones. Preliminary results from the July– December 2016 National Health Interview Survey (NHIS) indicate that 50.8% of American homes did not have a landline telephone but did have at least one wireless telephone.”).