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

In the Matter of	)	
	)	WC Docket No. 10-90
Connect America Fund	)	
	)	WC Docket No. 14-58
ETC Annual Reports and Certifications	)	
	)	CC Docket No. 01-92
Developing a Unified Intercarrier	)	
Compensation Regime	)	

Comments of TCA

I. Introduction

On March 30, 2016, the Federal Communications Commission ("FCC") released a Further Notice of Proposed Rulemaking ("FNPRM") inviting comment on several proposed reforms to the current rate-of-return universal service mechanisms.[1] Specifically, the FCC seeks comment on (1) eliminating particular categories of expense from inclusion in a RoR LEC's revenue requirement and calculations of high-cost support, (2) revising the cost allocation procedures between regulated and non-regulated activities and affiliate transaction rules, (3) penalizing RoR LECs that engage in improper accounting practices, (4) adopting a mechanism to provide additional support to unserved Tribal lands, (5) strengthening incentives for further broadband

[1] Report and Order, Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, Connect America Fund, WC Docket No. 11-42, Telecommunications Carriers Eligible for Universal Service Support, and CC Docket No. 01-92, Developing a Unified Intercarrier Compensation Regime, FCC 16-33 (rel. March 30, 2016) ("*Rate-of-Return Reform Order*" and "*FNPRM*").

deployment by RoR LECs, and (6) modifying or eliminating certain ETC reporting obligations and certifications.

TCA greatly appreciates this opportunity to comment on the issues raised in the FNPRM. As explained more fully below, TCA contends that both the FCC's long-standing and newly-instituted rules and procedures are more than adequate to ensure RoR LECs' operating expenses remain reasonable – and that additional rules concerning operating expenses are not necessary. Moreover, operating expenses not specifically prohibited should be recoverable if reasonable and serve a useful public purpose or legitimate business interest. TCA also asserts that existing cost allocation and affiliate transaction rules afford sufficient protection against regulated services cross-subsidizing unregulated services. TCA. Finally, TCA advises against imposing strict penalties on RoR LECs for improper accounting unless there is clear intent to mislead, supports providing voluntary enhanced broadband support on Tribal Lands, regards current buildout requirements as more than sufficient to ensure broadband deployment in unserved areas and also supports the FCC's proposals streamlining many of the annual ETC reporting requirements.

TCA is a national consulting firm that performs financial, regulatory and marketing services for over one-hundred local exchange carriers and their affiliates. The vast majority of TCA clients are rate-of-return regulated in both the interstate and state jurisdictions and offer voice and broadband services to their customers. Because of their sparsely-populated, high-cost service areas, TCA clients rely heavily upon federal and state high-cost support mechanisms.

II. Permitted Expenses

The *FNPRM* references a Public Notice released by the FCC which lists expense categories not recoverable through high-cost support and implying that other expenses – previously recoverable – were now not permitted.[2] The FCC seeks comment on expanding this list of excluded expenses – and also on excluding these expenses from the interstate revenue requirement of RoR LECs.[3] TCA observes that many of the expenses identified by the FCC are already excluded from recovery through high-cost support and revenue requirement calculations under existing rules. These expense include: (1) personal travel; (2) penalties or fines for statutory or regulatory violations; (3) political contributions; (4) penalties or fines for late payments on debt, loans, or other payments; or (5) personal expenses of employees, board members, family members of employee and board members, contractors, or any other individuals affiliated with an RoR LEC.

Before addressing specific proposed changes in permitted expenses, TCA would emphasize that issuance of a Public Notice is not a valid way to amend existing cost recovery rules. The proper way is to launch a rulemaking and build a record – as the FCC is now doing in this proceeding. Accordingly, any changes on permitted expenses should be effective on the date of an order resulting from this proceeding – not the date of the Public Notice.

TCA contends that as a general rule, expenses should be allowable if prudent and serve a public purpose or legitimate business interest. Additionally, for expenses to be recoverable through inclusion in high-cost support or interstate revenue requirements, they must meet the

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[2] *High Cost Oct. 19, 2015 Public Notice.*
[3] *FNPRM*, ¶¶340-342.

long-standing tests of being “used and useful” in service to the public; that is, the expenses must currently support or be capable of supporting a needed service to customers. Furthermore, disallowance is not always a clear cut decision and frequently requires determination on a case-by-case basis. For example, the FCC asks if part of the purchase price for excessive square footage of office or warehouse space should be excluded from revenue requirement.[4] Ascertaining whether floor space is “excessive” is complex and too subjective to be applied practicably. The FCC also expresses a concern that there may be incentives to place excess capacity in rate base that will not be used in the foreseeable future and asks if a rule is needed prohibiting regulated companies from leasing capacity from unregulated affiliates which is not presently utilized.[5] Such a rule would be dangerous in that disallowances for plant excess capacity risk penalizing economically sound construction plans.

The FCC questions the reasonableness of some executive compensation packages and seeks comment on how to address its concern.[6] TCA cautions that seemingly high executive compensation may be required to attract and retain employees with needed abilities to out-of-the-way rural areas. RoR LECs include co-operatives, publicly traded entities and privately held companies, all which require varied skills of board members to provide management with valuable oversight and direction. Accordingly, a “one-size-fits-all” rule regarding board member compensation and benefits is simply not appropriate.

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[4] *Id.*, ¶347.
[5] *Id.*, ¶348.
[6] *Id.*, ¶345.

Several other expense categories the FCC addresses in the FNPRM are also best evaluated in terms of reasonableness, not unconditional prohibitions. Charitable contributions, scholarships and membership fees and dues are but three examples. Charitable donations increase company awareness in the same way as advertising expenditures, and college and trade school scholarships encourage young residents to return to live and work in rural communities. Membership in national and state trade associations is essential to keep abreast of changing market and technological conditions, and membership in local chambers of commerce and the like are necessary to keep in touch with the changing telecommunications and business needs of RoR LEC customers.

Finally, the FCC's concern regarding permitted expenses is alleviated by the establishment of mechanisms limiting operating expenses. The FCC has limited the recovery of Corporate Operations Expense for almost two decades.[7] In the *Rate-of-Return Reform Order*, the FCC imposes a second limitation, this time on all operating expenses.[8] Finally, RoR LECs undergo interstate cost study reviews by the National Exchange Carrier Association ("NECA"), audits by the Universal Service Administrative Company ("USAC") and audits from various state regulatory bodies. This regulatory oversight virtually always includes independent scrutiny of the propriety of various expenses. [9]

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[7] 47 C.F.R. §54.901

[8] *Rate of Return Reform Order*, ¶¶98-99. To the extent an individual RoR LEC's operating expenses per location exceed a regression model-generated expense per location by 1.5 standard deviations, its operating expense accounts eligible for HCLS and CAF BLS recovery will be reduced proportionately.

[9] 47 C.F.R. §54.901

III. Cost Allocation and Affiliate Transactions

TCA shares the FCC's concern as to whether carriers are appropriately assigning costs to regulated operations. However, the FCC already has rules in place that address these concerns – and ensure that RoR LECs appropriately allocate costs between regulated and non-regulated operations. RoR LECs are subject to the FCC's Part 64 rules regarding the allocation of costs between regulated and non-regulated activities and to the affiliate transaction rules in Part 32. In general, these rules require RoR LECs to directly assign the expenses and revenues associated with that activity, whenever possible. If direct assignment is not a possibility, RoR LECs are to charge the affiliate the tariffed rate on tariffed services. On activities that cannot be directly assigned or are not tariffed, the RoR LEC is to calculate the fully distributed cost ("FDC") or current market value and is required to record the activity in a manner that would cause the most revenue (or the least expense) to be booked to the regulated company to prevent the recovery of any non-regulated activities from the USF. There is no evidence that these existing FCC rules are not working as designed – which precludes the need for any changes.

Additionally, TCA opposes extending the affiliate transaction rules to non-affiliated companies that have any sort of indirect relationship with the RoR LEC.[10] In rural America this could result in RoR LECs be required to treat virtually every transaction as if it was with an affiliate. The additional costs associated with analyzing and scrutinizing these non-affiliate transactions would far outweigh any perceived benefit of extending the affiliate transaction rules

[10] *FNPRM*, ¶351.

to non-affiliated companies.

As noted above, RoR LECs are under an intense amount of scrutiny through USAC audits, NECA reviews and state commission audits, as well as their own yearly financial audits to ensure strict adherence to these rules.

IV. Compliance and Penalties

While TCA supports enforcing penalties for carriers that willingly and knowingly employ improper accounting techniques – caution must be exercised to ensure these penalties are only imposed when intent is proven. Accordingly, it is imperative that the FCC establish "bright line" rules that prove a carrier's intent to inappropriately include such costs in its revenue requirement. The FCC's current standards lack the necessary specificity to prevent a RoR LEC from including an expense in good faith that could later be deemed "non-permitted." The FCC's 2015 Public Notice – which created considerable ambiguity on permitted expenses – highlights this concern. Without clear rules to determine whether the inclusion of expenses was a mistake or an attempt to commit fraud, carriers that mistakenly include non-permitted expenses could find themselves subjected to heavy penalties – some of which could result in increased costs for their customers.[11]

V. Tribal Support

Referring to the "distinct challenges" of bringing communications services to Tribal Lands, the FCC invites comment on ways of increasing support for RoR LECs serving Tribal Lands.[12] TCA recognizes the costs of building and maintaining telecommunications networks on Tribal

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[11] *Id.*, ¶363.
[12] *Id.*, ¶373.

Lands are considerably higher than in other parts of the country; therefore, TCA supports the NTTA proposal, which provides a voluntary option for enhanced support accompanied by enhanced buildout obligations. Specifically, NTTA proposes the non-model-based support of RoR LECs serving Tribal Lands be increased by 25%.

The FCC also asks whether the NTTA proposal should be mandatory. The vastly different buildout stages of RoR LECs serving Tribal Lands[13] reveal that there is not a universal need for this proposal. This is exactly why it should remain voluntary, as proposed. Furthermore, the RoR LECs serving the Tribal Lands should have same opportunity as those considering the Alternative Connect America Cost Model ("A-CAM") to weigh the enhanced broadband buildout obligations against the increased funding provided. The FCC has agreed to use CAF reserves to fund RoR LECs voluntarily adopting model-based support. Consistent with this decision, the FCC should likewise fund the enhanced Tribal support with CAF reserves.

VI. Incentives for Broadband Deployment

Announcing that it intends to monitor the impact of its USF reforms over time, the FCC asks for other ideas fostering broadband deployment in unserved areas.[14] TCA maintains the buildout obligations established in the *Rate-of-Return Reform Order* are more than adequate to ensure RoR LECs buildout broadband where it is unavailable today. RoR LECs remaining on legacy support must use a specific portion of CAF/BLS for broadband deployment over five years, and RoR LECs electing A-CAM support must meet very specific buildout targets over 10 years.

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[13] *Id.*, ¶370.
[14] *Id.*, ¶385.

VII. ETC Reporting Obligations and Certifications

The *FNPRM* seeks comment on revising its Form 481 in two ways. TCA whole-heartedly endorses both steps. First, the FCC proposes modifying or eliminating the following five Form 481 reporting requirements: (1) outage occurrences, (2) unfilled service requests, (3) complaints, (4) voice and broadband pricing, and (5) certification of compliance with service quality standards and consumer protection rules.[15] Taken together, these five requirements are burdensome, ambiguous, duplicative, yield little useful information and should be scrapped. Outage reporting is already required under existing FCC rules.[16] Just what constitutes a complaint or an "unfilled" service request is not well-defined and therefore subject to wide variation in interpretation leading to inconsistent reporting. Likewise, the obligation to certify compliance with applicable service quality standards and consumer protection rules leaves open the question of which standards and protections are applicable. Moreover, the Form 481 requires RoR ETCs to report voice and broadband rates by exchange, and it is unnecessary for them to certify also those same rates do not exceed urban survey benchmarks.

Second, the FCC tentatively concludes that the practice of filing duplicate copies of the Form 481 with the state commissions and Tribal governments should be eliminated, with USAC designated as the single repository. This would allow the parties to obtain information through an online process.[17] TCA agrees; the current practice is unnecessarily burdensome.

Unfortunately, the online access the FCC contemplates would make publically available

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[15] *Id*., ¶388.
[16] 47 CFR §4.1
[17] *FNPRM*, ¶392.

competitively sensitive information, including geocoded locations where RoR LECs have deployed broadband.[18] Despite its competitively sensitive nature, the FCC sees "no reason" for geocoded locations of broadband buildouts to be held confidential.[19] TCA strongly disagrees. For competitors to know where a RoR LEC has built out broadband recently – and likely plans to deploy facilities in the future – provides competitors critical information. Furthermore, Form 481 provides sensitive financial data that should not be available to competitors. TCA recommends that the FCC's existing confidentially rules remain in place.

VIII. Conclusion

TCA respectfully requests the FCC adopt rules and practices consistent with the foregoing comments. Expenses should be allowable if prudent, meet the used and useful regulatory standard or serve a legitimate business interest. The FCC's existing rules more than adequately ensure that RoR LECs appropriately allocate costs between regulated and non-regulated operations and should not be extended to non-affiliated entities that have any sort of indirect relationship with the RoR LEC. While TCA supports enforcing penalties for carriers that willingly and knowingly employ improper accounting practices, penalties should only be imposed where intent is proven. TCA supports the proposal of offering RoR LECs serving Tribal Lands a voluntary option for enhanced high-cost support. Finally, the FCC's proposals to streamline Form 481 filing requirements and eliminate duplicative reporting would be positive changes – however – existing confidentiality procedures must be retained.

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[18] *Id*., ¶210.
[19] *Id*., footnote 483.