

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

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

Further Notice of Proposed Rulemaking

Comments of the Montana Telecommunications Association

The Montana Telecommunications Association¹ (“MTA”) respectfully submits the following comments in response to the Federal Communications Commission’s (“Commission”) Further Notice of Proposed Rulemaking regarding “Permitted Expenses, Cost Allocation and Affiliate Transactions.”² (“Further Notice”)

I. Introduction & Summary

MTA understands and shares the Commission’s interest in ensuring that public funds are used responsibly and transparently. MTA is concerned, however, that Further Notice appears to infer that rural telecom providers are wasting public funds. Based on little evidence—derived from a few “bad apples”—the Further Notice presumes that all rural broadband providers are including unnecessary expenses in their rates and revenue requirements.

¹ MTA represents both commercial and cooperative rural telecommunications providers serving business and residential consumers throughout the state of Montana with voice and broadband communications capabilities.

² See above referenced WC Docket Nos. 10-90 and 14-58, and CC Docket No. 01-92. (“Reform Order .”) FCC 16-33. Released, March 30, 2016. Further Notice, ¶¶ 327-363.

While the Commission recently has adopted two reform orders that expand access and funding to two universal service programs (i.e., Low Income and Schools and Libraries), for the Further Notice questions expenses related to investing in the very broadband networks upon which low income subscribers, schools, libraries and all telecommunications consumers rely. Montana’s rural telecom providers invest their time and resources into deploying broadband connectivity as far and fast as they can, but the Further Notice sends the message that these providers’ legitimate business expenses are unnecessary.

After rooting out substantial waste in the Lifeline Program, demand for Low Income support fell from over \$2.2 billion to around \$1.5 billion today. The Commission’s response to its reform of the program is to raise the funding “cap” to \$2.25 billion and index it for inflation, with a provision to increase the cap even further if demand approaches the \$2.25 billion “budget.”³

Having observed demand for the Schools and Libraries Program (“E-Rate”) support exceed the Program’s previous funding level of \$2.3 billion—indexed for inflation—the Commission raised the program’s “budget” by an additional \$1.5 billion.⁴

MTA has no objection to either of these programs or the Commission’s reform initiatives, *per se*. MTA supports the goals of the programs and the Commission’s support for funding universal service programs *at a level that is commensurate with appropriate demand for the programs.*⁵

However, the Commission appears to apply a different standard to the High Cost Program. For example, while adopting a broadband speed definition of 25 Mbps downstream and 3 Mbps upstream as its new basic broadband

³ In the Matter of Lifeline and Link Up Reform and Modernization; Telecommunications Carries Eligible for Universal Service Support; and Connect America Fund. Third Report and Order, Further Report and Order, and Order on Reconsideration. WC Docket Nos. 11-42; 09-197 and 10-90. Rel. April 27, 2016.

⁴ In the Matter of Modernizing the E-rate Program for Schools and Libraries; and Connect America Fund. Second Report and Order and Order on Reconsideration. WC Docket Nos. 13-184 and 10-90. Rel. December 19, 2014.

⁵ As we have commented in the past, we do not support the diversion of E-Rate, Low Income or Rural Health Care support to the construction of redundant, duplicative telecommunications network facilities in the name of “creating” government-fabricated “competition.”

speed floor as part of its Section 706 proceeding, the Commission's High Cost Reform Order says it is "okay" to serve large swaths of rural America with broadband speeds far below the Commission's own minimum threshold.⁶ Because of the Commission's "hard cap" on high cost funding—not even indexed for inflation—the Commission effectively applies a double standard for broadband speeds in rural vs. urban America, and among universal service programs. High cost support is constrained below what is needed to fully fund universal broadband deployment at speeds the Commission itself considers essential, while funding for Lifeline and E-Rate meets or exceeds demand.

Rural broadband providers like MTA's members have been implementing in good faith for decades the goals of Congress and the Commission to deploy advanced communications services to their business and residential consumers in accordance to the letter and spirit of our national universal service laws and regulations. The dedication of these companies is evident in the quality of service they provide and the investment they make in their networks, their employees and their communities. Rural telecom providers often are among the largest employers, taxpayers and consumers in the counties in which they operate. They are engines of economic development in rural America.

The relationship between and among rural telecom providers and their communities constitutes a two-way mutual benefit. For example, rural schools often are the glue that keeps small towns active and viable. Rural telecom providers recognize the value of schools, parent-teacher organizations, 4-H clubs, and other community or economic institutions. By participating actively in these entities and the communities they serve with broadband communications and other advanced communications capabilities, rural telecom providers invest not only in broadband capabilities; they invest in the vitality of communities in which they operate. Indeed, their employees attend the same schools, churches, and clubs; they borrow from local banks and purchase local products and

⁶ To be fair, as Commissioner Pai points out in his dissent to the recent *USF Reform Order*, "a decade from now a subset of a subset of a subset of rural consumers will get access to the broadband speeds that 96% of urban Americans can purchase today. That's unacceptable."

services along with their consumers. In other words, one cannot “draw the line” between investment in network deployment, operation and maintenance on the one hand, and reasonable, well-founded community investment on the other. The former enables the latter, and *vice versa*. Further, investing in community provides a direct return on investment in the network, which encourages broadband adoption, a critical goal of the Commission. It is rather futile—if not harmful—to separate the *provision* of interstate telecommunications services from the *consumption* of interstate telecommunications services.

This virtuous cycle of investment not only accrues to the benefit of Rural America. Rural America’s investment directly benefits urban economies, and the national economy as a whole.⁷ Rather than recognize and encourage this relationship the Further Notice appears to question the intentions of rural telecom providers’ investments and expenditures with a thinly-veiled accusation that there is widespread abuse of the program, with these companies enriching themselves, providing their boards and employees with luxuries and other wasteful benefits at the expense of their owners, shareholders, members, customers and taxpayers. That is simply not the case; and the apparent indictment—based on no further evidentiary record than an isolated handful of bad-actors⁸—is prejudicial. It is the equivalent of saying since one or two career politicians are corrupt, that all politicians are corrupt.

II. Specific Comments on the Further Notice.

The Further Notice describes in some detail how high cost support mechanisms work for rate of return (RoR) carriers.⁹ Costs are allocated between regulated and non-regulated activities in accordance with Commission rules.

⁷ Hanns Kuttner. The Economic Impact of Rural Broadband. Hudson Institute. April, 2016. The rural telecom industry has a direct annual economic effect on the U.S economy in excess of \$24 billion. Rural broadband further supports more than \$100 billion in e-commerce, manufacturing, and retail sales.
https://www.frs.org/images/FRS_TheEconomicImpactofRuralBroadband.pdf.

⁸ Further Notice, ¶ 330.

⁹ ¶¶ 331-338.

Expenses are further allocated between intrastate and interstate jurisdictions. Additionally, rural companies adhere to basic ratemaking principles by ensuring regulated expenses meet the “used and useful” standard to ensure reasonableness of particular investments and expenses. In short, only a subset of a subset of investments made by rural RoR carriers—all subject to highly complex regulatory requirements, audits, and transparency rules—is allowed to be recovered through universal service support mechanisms available to high cost RoR carriers.

Significantly, these complex cost allocations are subject to scrutiny from independent third party auditors for nearly all rural companies as well as random audits from the National Exchange Carrier Association and the Universal Service Administration Corporation. Further, rural companies subject to state regulation are subject to audit and review by state public utility commissions. Put differently, the reason there are only a handful of “bad actors” abusing the High Cost program is because rural companies are already required to navigate a gauntlet of third party auditors to ensure they are appropriately using their high cost USF.

Further, rural carriers are subject to extensive state and federal compliance reporting obligations.¹⁰ Moreover, most (if not all) rural companies rely on third party cost consultants to work with them to ensure only allowable costs are included in the RoR annual cost studies. These cost studies are submitted to NECA for further review to ensure compliance.

The interrelationship between investment in network deployment, maintenance and operation and investment in community economic development and personal/employee welfare is at the heart of “used and useful,” “prudent expenditure” and investment that is “necessary to the provision of interstate telecommunications.”¹¹ To disallow as unnecessary these interrelated investments risks diminishing the value of such investment both in terms of

¹⁰ E.g., 47 CFR 54.313,

¹¹ ¶ 339.

financial returns to the company and returns to employee/consumer/community well being.

While MTA does not intend to dissect each and every item identified in the Further Notice, some expenses the Further Notice questions demand a response. For example, the Further Notice tentatively concludes as unnecessary such expenses¹² as:

- Travel. It is important to distinguish between *personal* travel and *professional* travel. The former arguably is not a recoverable expense, while the latter is. For example, if the CEO needs to execute a transaction such as a loan for broadband investment, or a merger with another company (accomplishing one of the Commission's goals to encourage collaboration and consolidation in the industry), it is important to recognize such travel as necessary. Similarly, board and employee travel to special governance meetings or regulatory briefings and training sessions held off site, is necessary. *Travel is an essential function of a successful enterprise with regional and national interests.* It is unreasonable to assume that individuals working in the telecommunications industry in rural Montana have access to the necessary technological, accounting, legal and other business training opportunities that exist in urban areas. Attendance at training conferences is necessary to stay abreast of the ever-changing issues in the telecommunications industry, and reasonable travel expense should be allowed as recoverable expenses.
- Celebrations of personal events. Standard management practice dictates that employers recognize the performance and accomplishment of employees contributing to the success of the enterprise. MTA cannot imagine a work environment devoid of

¹² ¶ 340.

recognition of employee and team engagement and successful accomplishment.

- Charitable donations. As mentioned above, rural telecom providers' contribution to the communities they serve is a two-way investment. Supporting the community supports business and broadband adoption.
- Scholarships. In addition to the bottom-line return on community investment, MTA notes that Montana statute requires cooperatives to invest unclaimed capital credits in education. Montana's rural broadband providers provide tens of thousands of dollars each year in scholarships that contribute substantially to our students' futures. We consider such investment in human capital essential as it is a primary mean in which we can encourage young Montanans to get the quality education they will need to hopefully return to rural America to operate the telecommunications networks of the future.
- Membership fees and dues. Membership in associations and other organizations, among other things, increases educational opportunities for employees and executives. Association membership leverages members' interests and enables like-minded individuals and companies efficiently and effectively to petition our government and to gather and analyze information and policies that affect their operations. Often, various associations and organizations can aggregate purchasing power or identify marketing, administrative and other operating efficiencies. Such memberships enhance investment returns for rural telecom providers and should be considered an important element in modern American corporate management.
- Sponsorships of community events. Mentioned above, investment in the community is investment in the company.

- Employee or vendor gifts. Mentioned above; keeping productive employees is an absolutely essential—indeed the *most* essential—investment a company can make.
- Housing expenses. One MTA member serves over 12,000 square miles of area with a population density of less than one household per square mile. Within this company's service area is a small mountain ski and summer resort where the cost of housing is exorbitant by Montana standards and wages. The company provides additional support for housing expenses for its plant personnel that work in this exchange area and need to reside nearby. But the Further Notice would appear to categorize such housing support as a disallowable expense. The housing assistance in this case saves environmental and travel costs as well as financial exposure for the individual employees.
- Entertainment. MTA asserts that expenses associated—for example—with annual meetings or employee recognition for high performance valuable investments in human capital. These functions are vital to employee morale and member/consumer relations.
- “Tangible property not logically related to or necessary to the offering of voice or broadband services.” MTA considers this highly subjective. What, or who, determines when an expense is “not logically related?” The Further Notice appears to consider all expenses not directly hard-wired to network facilities as unnecessary. MTA reasonably disagrees. Related expenses can, and must, include indirect costs as well as direct costs.
- Childcare. Childcare increasingly is recognized as an essential benefit to help retain and employ American citizens. Stagnant wages and standards of living are front and center in this year's Presidential campaign. Candidates on both sides of the political spectrum are proposing policies that are focused on providing more

opportunity for average American employees to work and earn livable wages.

- Housing allowances (again). Mentioned above. It is both good business and good for the environment to help employees live in expensive areas to serve when normal compensation is insufficient to meet service or quality goals of the company.

In paragraphs 343, *ff.*, the Further Notice seeks comment on a variety of other expenses, such as:

- Marketing and General and Administrative (G&A) expenses. As noted above, marketing, sales and broadband deployment expenditures in support of encouraging broadband adoption are directly related. Similarly, G&A is a necessary expense in the deployment of broadband services. MTA understands the Commission's concern that expenses related to non-regulated activities could be misallocated to regulated expenses. However, the vast majority of providers are conscientious in properly allocating expenses among regulated and non-regulated services and between affiliates. A new rule, as suggested in the Further Notice, to classify certain costs as common costs may misallocate expenses either to regulated or non-regulated services or affiliates.
- Absolute lowest identified price. Among the many benefits that customers of rural broadband providers receive are local presence and the kind of service that small, local businesses provide to their customers on a daily basis. While it is incumbent on rural telecom providers to be as efficient as feasible at all times, there often may be circumstances that warrant purchasing products and services locally, rather than from more distant, and perhaps "less expensive" sources. For example, MTA members would prefer to purchase office products, services or even, occasionally, vehicles from local dealerships and retailers than from "box stores" or on line warehouses outside of their service areas. Additionally, there are

circumstances when time is critical, and local products and services, while possibly more expensive—depending on variables—may be the most expedient. Notwithstanding, MTA members also order least-expensive products and services on line and from national distribution centers when circumstances warrant. We note, too, many local services and products (e.g., legal or accounting services) actually are less expensive when purchased locally.

- Buildings purchased or rented. The Further Notice suggests that “excessive square footage” may be acquired by a regulated carrier “in order to earn a rate of return on that space.”¹³ MTA fears “excessive” is a subjective term that may be interpreted punitively or retroactively. Rural broadband providers acquire space as needed, with future use in mind. “Future” may be as near-term as the next winter. Warehouses may look empty in the summer, when equipment could be diffused throughout the service area. In winter, however, companies tend to bring their equipment to a warm and safe place. If future projects, such as investment in broadband deployment, are anticipated to require more facilities in future years, it may be more efficient to acquire additional space today rather than more than two years hence.
- Plant held for future use. As noted above, it may be difficult to anticipate exactly when plant is going to be used. While existing rules use a two-year horizon, two years is a very short window, especially when broadband providers are required to file 5-year plans under current rules, and will be expected to develop 10-year investment horizons under the USF Reform Order.

¹³ ¶ 347.

III. Conclusion

MTA urges the Commission to reduce regulatory burden and increase regulatory certainty. However, the Further Notice could achieve the opposite of its intended effect by making investment in broadband deployment and adoption more expensive and compliance more burdensome and complex.

The Further Notice questions as unnecessary a number of specific expense items, nearly all of which are logical, legitimate business expenses necessary for the operation of a broadband telecommunications network. MTA suggests that current rules already ensure that expenses are used and useful and are necessary to the provision of advanced communications. In fact, current rules have been effective in identifying the few bad apples that presumably led to the proposals in the Further Notice.

Rural telecom providers continuously demonstrate their commitment and dedication to investing in advanced communications capabilities, people and communities in Rural America. MTA urges the Commission not to let a few bad apples spoil the bunch.

Respectfully submitted

/s/

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