

**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 Certification)	WC Docket No. 14-58
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92

PETITION FOR RECONSIDERATION

Petitioner rate-of-return (ROR) carriers, by their attorneys, hereby ask the Commission to reconsider its *Order*¹ reducing the support available to ROR carriers that remain on legacy support mechanisms (ROR Legacy Support Carriers) by shifting that support to carriers electing model-based support and increasing the broadband build-out requirements of ROR Legacy Support Carriers.² The Commission's action is contrary to its stated safeguard measures to ensure the sufficiency of support for ROR carriers and it is not in keeping with Section 254(b)(5) of the Act.

The *Order* reduces the amount of support available for ROR Legacy Support Carriers in at least two ways. First, the support available for ROR Legacy Support Carriers will be reduced

¹ *Connect America Fund; ETC Annual Reports and Certification; Developing an Unified Intercarrier Compensation Regime*; WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92; Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33, rel. March 30, 2016 (*Order*).

² The ROR carriers supporting this Petition are Custer Telephone Cooperative, Inc., Emery Telcom, Harrisonville Telephone Company, Lonsdale Telephone Company, Rural Telephone Service Co., Inc., dba Nex-Tech, Peñasco Valley Telephone Cooperative, Inc., Spring Grove Communications, The Ponderosa Telephone Company, Star Telephone Company, Inc., Table Top Telephone Company, and Wiggins Telephone Association.

if carriers initially accept model-based support and then decline to accept the final amount of model-based support. In discussing carriers electing to receive support based on the model, the Commission states:

If we proceed to the second step of the election process, those carriers that initially accepted but subsequently decline to accept the revised offer will continue to receive support through the legacy mechanisms, as otherwise modified by this Order. If the carrier received more support from the legacy mechanisms in 2015 than it was offered by the final model run, the overall budget for all carriers that receive support through the rate-of-return mechanisms (HCLS and reformed ICLS) will be reduced by the difference between the carrier's 2015 legacy support amount and the final amount of model support offered to that carrier.³

In a footnote, the Commission explains that this means that "if a carrier received \$1 million in high-cost support in 2015 and accepted an offer of \$900,000 in model-based support, but then in the second step of the process the offer is reduced to \$700,000, and the carrier decides not to accept the \$700,000 offer, the overall budget for the non-model-based carriers will be reduced by \$300,000 going forward."⁴ It is unknown how much the support available to ROR Legacy Support Carriers will be reduced by this mechanism and the Commission puts no limitation on the reduction in available support.

Second, the *Order* states that the amount of model-based support disbursements to carriers choosing model-based support and CAF-ICC will be deducted from the total demand from ROR carriers, both carriers receiving support via legacy mechanisms and the model, and the remainder will be the total support available to be disbursed to ROR Legacy Support Carriers under HCLS and CAF BLS.⁵ It appears that the model-based support disbursements will equal the amount of 2015 total legacy support for the carriers selecting model support, plus up to \$150

³ *Order* at ¶ 69.

⁴ *Order* at n. 141.

⁵ *Order* at ¶ 149.

million from high cost reserves.⁶ Therefore, it appears that this mechanism also may reduce the available support for ROR Legacy Support Carriers by more than the 2015 legacy support for carriers selecting model support. If, however, this is not the Commission's intent, it should clarify this aspect of its *Order*.

The potential unlimited reduction in available support for ROR Legacy Support Carriers means that support will be neither sufficient nor predictable, contrary to Section 254(b)(5) of the Act and it is at odds with the Commission's safeguard measures to ensure the sufficiency of the budget for ROR carriers. The Commission states that it retains measures affirmed by the Tenth Circuit "to safeguard the sufficiency of the budget"⁷ including "(1) maintaining current USF funding levels while reducing or eliminating waste and inefficiencies that existed in the prior USF funding scheme."⁸ The purpose of the reduction in the current level of support available for ROR Legacy Support Carriers caused by the mechanisms discussed here, however, is not to eliminate waste and inefficiencies.⁹ Rather, the Commission states that the support available to ROR Legacy Support Carriers will be reduced if carriers decline model support in the second step of the election process because "the difference will already have been redistributed amongst the carriers accepting model-based support."¹⁰

In the *Order*, the Commission notes that it asked for comment "on the impact of adopting a voluntary path to the model on the overall budget for rate-of-return areas and whether adoption

⁶ *Order* at ¶ 62.

⁷ *Order* at ¶ 148.

⁸ *Order* at ¶ 148.

⁹ This is not to suggest that Petitioners agree that the Commission's other reforms eliminate waste and inefficiencies. With the volume and complexity of the changes implemented by the *Order*, ROR carriers are still trying to determine the impact of other changes to the fund and to specific carriers.

¹⁰ *Order* at ¶ 69.

of such a plan would have the effect of squeezing the budget available for carriers that do not opt into the plan."¹¹ However, in spite of identifying this as a concern, and even though alternative approaches are available that would not squeeze the budget for ROR Legacy Support Carriers, the Commission chose to implement the model in a manner that has the effect of squeezing the budget available for ROR Legacy Support Carriers.¹² This will hurt the ability of these carriers to deploy broadband and maintain their networks, as well as jeopardize existing loan obligations by limiting reimbursement for already-constructed broadband networks. Ultimately, it will negatively impact the ability to provide reasonably comparable services to consumers in rural areas. It is simply unfair to punish ROR carriers that do not or cannot select the voluntary model because of the actions of other carriers that initially select the A-CAM model and then subsequently decline model support.

The Commission also does not explain how a reduced amount of available support will be sufficient in light of its decision to increase the broadband build-out requirements on ROR Legacy Support Carriers. Whereas, previously, ROR carriers were required to deploy broadband service only on reasonable request, the Commission now imposes a broadband deployment obligation on ROR Legacy Support Carriers. Specifically, ROR Legacy Support Carriers must use a portion of CAF-BLS to deploy broadband to new locations. However, CAF-BLS is not “new” support money following a new obligation. CAF-BLS does not increase the overall budget for ROR support and it also does not increase the budget for ROR Legacy Support

¹¹ *Order* at n. 131.

¹² As an alternative mechanism, the Commission should consider multiple successive offer and acceptance rounds until the remaining A-CAM electing company support falls within the bounds of existing support plus the \$150 million from high cost reserves, rather than stop after a second round.

Carriers. It includes the renamed ICLS support, which reimburses costs for previous investment. And, it can be reduced via the budget control mechanism.

Even at support levels before the latest round of reforms, the Commission states that 13 percent of housing units lack access to 4/1 Mbps terrestrial fixed Internet access service, some carriers have not deployed 10/1 Mbps service to any census block within their study area, and other ROR carriers have “extremely low” levels of deployment of 10/1 Mbps service,¹³ indicating that ROR carriers did not receive support sufficient to deploy 10/1 Mbps service. By imposing specific broadband build-out requirements with even less available support, support for ROR Legacy Support Carriers will be neither sufficient nor predictable, contrary to Section 254(b)(5) of the Act. Further, by no longer affording carriers the authority to determine which requests for broadband service are reasonable, the Commission's action is contrary to its second safeguard measure it claims to follow.

In the *Order*, the Commission states that it retains measures affirmed by the Tenth Circuit "to safeguard the sufficiency of the budget"¹⁴ as follows: "(1) maintaining current USF funding levels while reducing or eliminating waste and inefficiencies that existed in the prior USF funding scheme; (2) affording carriers the authority to determine which requests for broadband service are reasonable; (3) allowing carriers, when necessary, to use the waiver process; and (4) conducting a budgetary review by the end of six years."¹⁵ As shown herein, however, the *Order* does not maintain current USF funding levels for ROR Legacy Support Carriers and reduces those levels for reasons other than eliminating waste and inefficiencies. ROR Legacy Support

¹³ *Order* at fn 42; ¶¶ 163-164.

¹⁴ *Order* at ¶ 148.

¹⁵ *Order* at ¶ 148.

Carriers must now meet defined broadband build-out requirements, with less available support, and will no longer be afforded the authority to determine which requests for broadband service are reasonable. And, the Commission has not conducted a budgetary review of support available for ROR carriers. Thus, contrary to its statement, the only safeguard retained by the Commission is that carriers may seek a waiver. It is well established that a waiver cannot justify an otherwise unreasonable rule.¹⁶ Accordingly, the Commission should reconsider its *Order*.

Based on the foregoing, Petitioners ask the Commission to reconsider those aspects of its *Order* that reduce the support available to ROR Legacy Support Carriers by shifting that support to carriers electing model-based support and increasing the broadband build-out requirements of ROR Legacy Support Carriers. The Commission's action is contrary to its stated safeguard measures to ensure the sufficiency of support for ROR carriers and it is not in keeping with Section 254(b)(5) of the Act.

Respectfully submitted,

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¹⁶ *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 50-51 (D.C. Cir. 1977). See *U.S. Telecomm. Ass'n v. FCC*, 359 F.3d 554, 571 (D.C. Cir. 2004) (“[T]he mere existence of a safety valve does not cure an irrational rule.”)