

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

**REPLY COMMENTS OF  
GVNW CONSULTING, INC.**

GVNW Consulting Inc. (“GVNW”)<sup>1</sup> respectfully submits these reply comments in the above captioned proceeding. The Further Notice of Proposed Rulemaking (“*FNPRM*”)<sup>2</sup> reviews and proposes to exclude certain expenses in the interstate revenue requirement of rate-of-return carriers and from universal service high-cost support unless such expenses are recognized by the Commission as necessary to the provision of interstate telecommunications services and used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

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<sup>1</sup> GVNW Consulting, Inc. is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America.

<sup>2</sup> *Connect America Fund, et al.*, WC Docket No. 10-90 *et al.*, Report and Order, Order and Order on Reconsideration, Further Notice of Proposed Rulemaking (rel. March 30, 2016) (alternatively, *Rate-of-Return Reform Order (Order)* or “*FNPRM*,” as applicable).

Small rate-of-return carriers serve difficult geographical, topographical, meteorological and economic environments. They are tasked with providing advanced telecommunications service to rural Americans deserving of the same educational, civic and economic opportunities as those residing in urban and suburban areas. To provide such service universally, rate-of-return carriers require support through the Universal Service Fund high-cost mechanism and risk sharing for their interstate revenue requirement through NECA pooling. In exchange for the opportunity to participate in those mechanisms, such carriers are comprehensively regulated at the federal and state levels, must meet commitments to government and private lenders and, most importantly, are obligated to satisfy the telecommunications needs of their friends and neighbors, fellow businesses in their service area, and anchor institutions so important to maintaining the viability of rural America.

Small rate-of-return companies, and their consultants, strive to meet their obligations through creative, prudent and forward-looking management. They must provide, expand and improve service while carefully navigating the complex regulatory structure in which they operate. Thus, clarity with respect to the proper recovery of costs is helpful to carriers and their consultants, and simplifies and streamlines the work of NECA and USAC in administering the interstate tariffs of rate-of-return carriers and their universal service support. GVNW supports such clarity as well as rules mandating prudent management of costs that conforms to rate-of-return principles. As a consultant to small rate-of-return carriers serving in challenging rural environments, GVNW operates according to the highest ethical principles, helps carriers adhere to the letter and spirit of Commission rules and policies, and advises clients that success in the challenging world of rural telecommunications includes carefully and prudently controlling investment and expenses.

**I. Rate-of-Return Carriers Must Have an Opportunity to Recover Regulated Costs While Charging Consumers Reasonably Comparable Rates**

While it is certainly necessary and appropriate for the *FNPRM* to focus on the regulatory “tree” of cost recovery through USF precluded due to competitive overlap policies, the *FNPRM* ignores the “forest” of policy and funding decisions included in the *Rate-of-Return Reform Order* that raise the probability of unrecoverable regulated interstate costs. As aptly named by NTCA in its comments on the *FNPRM*,<sup>3</sup> the Commission’s Order has created a “regulatory black hole” that threatens to suck in and destroy the benefits to consumers resulting from the otherwise reasonable and balanced policies adopted in the *Order*.

One solution to address the gap in the regulated interstate revenue requirement is for the Commission to permit carriers to assess consumers with a regulated rate element, tariffed or untariffed, that would permit recovery of such costs. Current rules prohibit carriers from exceeding the cap on the subscriber line charge (“SLC”) to recover such costs, and almost all rate-of-return carriers currently charge the capped amount. However, increasing rates via an increase in the SLC cap, or through the use of another regulated rate element, threatens the ability of rate-of-return carriers to certify to the statutory requirement of providing service at “reasonably comparable rates.”<sup>4</sup> As noted by NTCA with respect to recovering more costs from end users “To the extent that new cuts, caps, and controls compel increased cost recovery directly from rural consumers, this could undermine, if not defeat, the ability of consumers to obtain services at ‘reasonably comparable’ rates.”<sup>5</sup>

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<sup>3</sup> See Comments of NTCA on *FNPRM*, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92 (filed May 12, 2016) at p. 29.

<sup>4</sup> 47 U.S.C. 254(b)(3).

<sup>5</sup> See Comments of NTCA on *FNPRM*, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92, (filed May 12, 2016) at p. 28.

While the Commission has substantially increased the funding for high-cost portions of price-cap company service areas, as well as for the E-rate and Lifeline programs, it has added obligations without commensurate increases in funding to meet one of the greatest challenges in telecommunications – providing advanced services using reliable and high-performing wired terrestrial infrastructure to the vast expanses of rural and remote areas served solely by rate-of-return carriers.

The Commission should devote at least as much scrutiny to rate-of-return carriers’ certification of their provision of voice and broadband services at reasonable rates as it does to ensuring that the rate-of-return portion of the universal service high-cost fund remains within the allocated budget. If, after implementing all the cuts, caps and controls on rate-of-return carriers and the portion of the universal service fund devoted to addressing their provision of advanced services in high-cost areas, an increase in the budget allocated for universal service support for such areas is necessary to comply with the statutory requirement for those supported carriers to charge reasonable rates, the Commission has little choice but to comply with the statute, do the right thing and increase the size of the rate-of-return portion of the universal service high-cost fund.

## **II. The Commission Should Not Use the *FNPRM* to Redefine “Deemed Lawful”**

The *FNPRM* proposes a new exception to the “deemed lawful” provision in Section 204(a)(3) of the Communications Act of 1934. As noted by WTA “Section 204(a)(3) can[not] reasonably or accurately be read to allow the Commission to void a tariff transmittal’s ‘deemed lawful’ status because the issuing carrier incorrectly or inadvertently certified that its revenue

requirements were compliant with applicable standards.”<sup>6</sup> NTCA provides an extensive, clear and instructive history of the proper interpretation of the “deemed lawful” provision,<sup>7</sup> and logically concludes “If adopted as expressly proposed in the *FNPRM*, an exception to the “deemed lawful” provision rule would contradict decades of jurisprudence surround the meaning of such provisions, overturn decades of Commission precedent consistent with that case law as to what this addition to the Telecommunications Act of 1996 meant, and ultimately eviscerate the significance of the “deemed lawful” language in the statute by effectively treating any violation once detected as exempt from that provision.”<sup>8</sup> If the Commission would like to revisit the interpretation of the “deemed lawful” rule to suggest inclusion of an exception for a “furtive” tariff filing, it should do so with a more developed record and in a proceeding applicable to all carriers affected by its application, not just those regulated under the rate-of-return mechanism. The reinterpretation of the meaning of “deemed lawful” as proposed in the *FNPRM* should be rejected.

### **III. Changes in Allowed Costs Should Be Prospective Only**

GVNW agrees with the comments of WTA which urge the Commission “to clarify that, except for costs that previously have been clearly and explicitly disallowed by its rules, the determinations made as a result of this review during this further rulemaking will be prospective only.”<sup>9</sup> Rate-of-return carriers cannot comply with rules with respect to the allowability of certain expenses based on rules not in existence at the time expenditures were made. Ambiguity

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<sup>6</sup> See Comments of WTA on *FNPRM*, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92, (filed May 12, 2016) at p. 18.

<sup>7</sup> See Comments of NTCA on *FNPRM*, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92, (filed May 12, 2016) at pp. 23 – 27.

<sup>8</sup> *Id* at p. 27.

<sup>9</sup> See Comments of WTA on *FNPRM*, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92, (filed May 12, 2016) at p. 4. Also see Comments of ITTA in the same proceeding at p. 2.

as to the Commission's intent in this regard will create unnecessary confusion and problems when rate-of-return carriers are audited by USAC. It is in the best interests of the Commission, USAC, NECA and rate-of-return carriers for the Commission to clearly and explicitly state that new rules apply on a prospective basis only.

#### **IV. The Commission Should Not Adopt its Proposal to Enormously Expand the Scope of its Affiliate Transaction Rules**

GVNW opposes the Commission's proposal to apply affiliate transaction rules to transactions with non-affiliated entities. The entire purpose of the affiliate transaction rules is to apply a higher-level of scrutiny to those transactions that are not at arm's length given a defined relationship between the parties to a transaction. Applying such rules to transactions in which both parties agree on terms that reflect their own best interests is nothing more than over-regulatory second-guessing by Washington bureaucrats. GVNW agrees with the opposition of several parties<sup>10</sup> to such a Commission approach. If the Commission seeks to redefine the definition of affiliation to instances where there is "a close family relationship or cross-participation on boards"<sup>11</sup> it should have a proceeding to do so in which it would clearly define those terms.<sup>12</sup> Instead, the *FNPRM* suggests that expanded definition but notes that increased scrutiny would extend long-standing affiliate transaction rules to transactions between non-affiliated parties, *including but not limited to the situations noted above*.<sup>13</sup> A proceeding on redefining the term "affiliate" would be far broader than one involving allowable costs of rate-of-

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<sup>10</sup> See Comments of WTA on *FNPRM*, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92, (filed May 12, 2016) at pp. 17-18, NTCA at p. 20 and TCA at p. 6.

<sup>11</sup> See *FNPRM* at ¶¶ 350-351.

<sup>12</sup> NTCA correctly notes that the Commission already has rules governing affiliate transaction review involving cross participation on boards of directors. See Comments of NTCA on *FNPRM*, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92, (filed May 12, 2016) at Fn. 50.

<sup>13</sup> See *FNPRM* at ¶ 350.

return carriers as it implicates all Commission rules where affiliation limits Commission regulatees in some form or fashion.

#### **V. GVNW Supports the Pruning of Unnecessary Reporting Requirements**

GVNW agrees with several commenters that support the Commission's proposed elimination or modification of ETC annual reporting requirements regarding outage reports, unfulfilled service requests, consumer complaints, voice and broadband pricing, and service quality standards.<sup>14</sup> Specifically, GVNW supports the suggestion in the *FNPRM* that the following five sets of requirements be eliminated, or if that is not practicable, modified to reduce compliance burdens: outage information, unfulfilled service requests, the number of complaints per 1,000 subscribers for both voice and broadband service, pricing for both voice and broadband service, and certification that a carrier is complying with service quality standards. These reporting requirements are unnecessary, duplicative, or not useful to the Commission for evaluating compliance with specific high-cost program requirements. USTelecom and NTCA comprehensively analyze the necessity for each of the specified reporting requirements and make compelling cases for the modification and/or elimination of each reporting requirement.<sup>15</sup>

With respect to the submission of Form 481 to USAC which would then share it with other relevant parties, GVNW agrees with other commenters that this would be very helpful in relieving unnecessary reporting burdens,<sup>16</sup> but also shares the concern of several commenters about the confidentiality of the information provided on Form 481 if the submission of the form

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<sup>14</sup> See Comments of USTelecom on *FNPRM*, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92, (filed May 12, 2016) at p. 8 and WTA at pp. 19-20.

<sup>15</sup> See Comments of USTelecom on *FNPRM*, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92, (filed May 12, 2016) at pp. 6-9, Comments of Alexicon at pp. 12-13 and Comments of NTCA at pp. 39-41. Also see comments of ITTA at p. 5.

<sup>16</sup> See Comments of Windstream on *FNPRM*, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92, (filed May 12, 2016) at p. 2, USTelecom at p. 8, TCA at p. 9 WTA at pp. 19-20.

was streamlined in this manner.<sup>17</sup> The issue is the legal ability of state governments and tribal entities to protect the confidentiality of confidential and proprietary information. As suggested by WTA, “Where a state Commission or tribal government can legally certify that it has the legal authority and capability to protect data marked as proprietary and confidential, there is no problem and the entity and its staff should have the same access as the Commission to the proposed USAC online tool. Where a state Commission or tribal government cannot provide such certification, the individuals comprising it and its staff should be allowed access if they execute and file personal certifications under a protective order similar to those issued in other Commission proceedings involving confidential data.” WTA’s approach is reasonable and balanced and should be adopted.

## **VI. Serving Consumers on Tribal Lands**

GVNW agrees with NTCA that NTTA’s suggestion of a “Tribal Broadband Factor”<sup>18</sup> to address the high-costs of serving tribal lands would “appear to represent a reasonable way of ‘superimposing’ a relatively straightforward solution to this problem atop now-reformed USF mechanisms, and given that the focus of reform should be on the consumer, NTCA believes that support from such a mechanism should be equally available, on an optional basis, to *all* companies that serve tribal lands.”<sup>19</sup> NTCA makes two important points – first, that service to tribal lands is important regardless of the identity of the provider, and second, that providers serving tribal lands should have the opportunity to balance the potentially additional obligations

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<sup>17</sup> See Comments of USTelecom on FNPRM, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92, (filed May 12, 2016) at p. 8, WTA at pp.19-20, TCA at pp. 9-10 and Windstream at p. 3.

<sup>18</sup> See *Ex Parte* letter from Godfrey Enjady, President, NTTA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed June 9, 2015) at 2.

<sup>19</sup> See Comments of NTCA on FNPRM, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92, (filed May 12, 2016) at pp. 35-36.

associated with tribal support with the additional revenue from such support to determine whether such support is adequate.<sup>20</sup> That question will be easier to answer as the Commission determines how a Tribal Broadband Factor can be conformed to the changes made to the universal service high-cost mechanisms adopted in the *Rate-of-Return Reform Order*.

Any additional tribal broadband funding adopted by the Commission should not further strain the residual monies available to those legacy rate-of-return carriers operating under the constraints of the Order's budget controls. Any monies required to implement a Tribal Broadband Factor should be derived from additional universal service funding specifically devoted to that purpose, preferably from universal service fund reserves if available, but should not displace any portion of the already inadequate funding allocated to legacy rate-of-return carriers.

## **VII. Conclusion**

Small rate-of-return companies strive to meet their obligations through creative, prudent and forward-looking management. Clarity with respect to the proper recovery of costs helps carriers adhere to the Commission's rules and policies, rationally design and implement plans to expand and improve voice and broadband service, and simplifies and streamlines the work of NECA and USAC in administering the interstate tariffs of rate-of-return carriers and their universal service support. GVNW supports such clarity as well as rules mandating prudent management of costs that conforms to rate-of-return principles.

The most important question raised by the *FNPRM*, fundamental to the successful implementation of the revamped universal service high-cost regime for rate-of-return carriers, is

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<sup>20</sup> See Comments of TCA on FNPRM, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92, (filed May 12, 2016) supporting optionality at p. 8.

the potential for a substantial gap in the regulated interstate revenue requirement. Solutions to filling this “regulatory black hole” must be cognizant of the statutory requirement for carriers receiving universal service high-cost support to certify that they are charging reasonably comparable rates. The Commission should not discount the potential need for an increase in the budget for the rate-of-return portion of the high-cost universal service fund if that becomes required to fulfill the goals of the Order and adhere to the statute.

The reinterpretation of the meaning of “deemed lawful” as proposed in the *FNPRM* should be rejected. If the Commission would like to revisit the interpretation of the “deemed lawful” rule to suggest inclusion of an exception for a “furtive” tariff filing, it should do so with a more developed record and in a proceeding applicable to all carriers affected by its application, not just those regulated under the rate-of-return mechanism.

The Commission should clarify that, except for costs that previously have been clearly and explicitly disallowed by its rules, the determinations made as a result of this review during this further rulemaking will be prospective only. Rate-of-return carriers cannot comply with rules with respect to the allowability of certain expenses based on rules not in existence at the time expenditures were made.

GVNW opposes the Commission’s proposal to apply affiliate transaction rules to transactions with non-affiliated entities. The entire purpose of the affiliate transaction rules is to apply a higher-level of scrutiny to those transactions that are not at arm’s length given a defined relationship between the parties to a transaction. It is neither wise nor necessary for such rules to be applied to transactions in which both parties agree on terms that reflect their own best interests.

Adoption of a “Tribal Broadband Factor” to address the high-costs of serving tribal lands appear to be a relatively straightforward solution to the problem of high costs on tribal lands. Any supplemental support for tribal lands should be equally available, on an optional basis, to *all* companies that serve tribal lands. A Tribal Broadband Factor should not further strain the residual funding available to those legacy rate-of-return carriers operating under the constraints of the Order’s budget controls. Any additional monies required to fund a Tribal Broadband Factor should be in addition to the budget allocated to high-cost universal service for legacy rate-of-return carriers.

Respectfully submitted,

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