

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Connect America Fund

WC Docket No. 10-90

Universal Service Reform - Mobility Fund

WT Docket No. 10-208

ETC Annual Reports and Certifications

WC Docket No. 14-58

Establishing Just and Reasonable Rates for  
Local Exchange Carriers

WC Docket No. 07-135

Developing an Unified Intercarrier  
Compensation Regime

CC Docket No. 01-92

**COMMENTS  
OF THE**

**WASHINGTON INDEPENDENT TELECOMMUNICATIONS ASSOCIATION  
COLORADO TELECOMMUNICATIONS ASSOCIATION  
NEVADA TELECOMMUNICATIONS ASSOCIATION  
OKLAHOMA TELEPHONE ASSOCIATION  
OREGON TELECOMMUNICATIONS ASSOCIATION**

**In Response To  
Further Notice of Proposed Rulemaking  
FCC 14-54**

**August 8, 2014**

## SUMMARY

The Western Associations<sup>1</sup> take the following positions in this set of comments:

- The Western Associations express support for the phase-in of the urban local rate floor, but ask the Commission to do a careful review of how the benchmark was derived since it appears to be higher than what the members of the Western Associations perceive is the average local urban rate.
- The Western Associations express their concern that the actions the Commission has taken in the past created financial uncertainty for rate-of-return companies and recommends that the Commission take this FNPRM as an opportunity to create a more positive business environment favorable to new investment.
- The Western Associations support the increase in the broadband service performance requirements to 10 Mbps downstream as long as it is funded through a sufficient mechanism. However, the Western Associations express concern about the cost of increasing the upstream speeds above 1 Mbps.
- The Western Associations support the modification to the HCLS index cap to prevent the "falling off the cliff" effect and request consideration be given to providing relief to those companies that have already fallen.
- The Western Associations ask the Commission to not adopt the proposal that no new investment be recovered through HCLS and ICLS in areas also served by a qualifying competitor.
- The Western Associations do not support the removal of support under the one hundred percent overlap concept.
- The Western Associations urge caution be taken in adopting longer-term reforms.
- The Western Associations recommend that the rate-of-return represcription proceeding be terminated.
- The Western Associations support the optionality of the ITTA Plan, but take no position on the substance of the ITTA Plan at this time.
- The Western Associations urge support of middle-mile costs under a new budget for that purpose.

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<sup>1</sup> The Western Associations consist of the Washington Independent Telecommunications Association, Colorado Telecommunications Association, Oklahoma Telephone Association, Oregon Telecommunications Association and Nevada Telecommunications Association. Please note that while AT&T and CenturyLink are members of the Nevada Telecommunications Association, they are not joining in these comments.

## INTRODUCTION

For the purpose of these comments, the Western Associations are the Washington Independent Telecommunications Association, Colorado Telecommunications Association, Oklahoma Telephone Association, Oregon Telecommunications Association and the Nevada Telecommunications Association. The Western Associations commend the Commission for taking on the ambitious set of proposals contained in the Further Notice of Proposed Rulemaking (FNPRM) in this docket.<sup>2</sup> The Western Associations will offer a number of observations and comments concerning the matters in the FNPRM, but will not address all aspects of the FNPRM.

## COMMENTS

### 1. Urban Rate Floor.

In the Report and Order portion of FCC 14-54, the Commission determined that it would phase-in the change in the residential urban rate floor.<sup>3</sup> The Western Associations do want to take this opportunity to express appreciation to the Commission for its phase-in of the new urban rate floor. The phase-in will be helpful for the Western Associations' member companies to be able to meet the urban rate floor requirements without providing immediate, severe rate shock to customers. Ultimately, however, if the urban rate floor is fully implemented, there will be customer dissatisfaction and rate shock to the total bill that is produced.

As further action on this issue, the Western Associations request that the Commission carefully review how the urban rate floor was developed. The ultimate level for this iteration of

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<sup>2</sup> *In the Matter of Connect America Fund, Universal Service Reform - Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime*, WC Docket No. 10-90, WT Docket No. 10-208, WC Docket No. 14-58, WC Docket No. 07-135, CC Docket No. 01-92, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 (rel. June 10, 2014), referred to in these Comments as "FCC 14-54."

<sup>3</sup> FCC 14-54 at ¶ 80.

the urban rate floor appears to be very high to the Western Associations. For example, in the state of Washington the incumbent local exchange carrier (ILEC) that serves most of the urban areas is CenturyLink (legacy Qwest). The residential rate for service in those urban areas is \$15.00 per month. Having rural customers ultimately pay \$20.00 per month for local residential service means that they are paying rates that are thirty-three percent higher than the rates urban customers pay for the same class of service. To add insult to injury, the calling scope (number of customers that can be reached without paying toll charges) is much less for rural customers than urban customers.<sup>4</sup>

As another example, CenturyLink (legacy Qwest) also serves most of the urban areas in Oregon. CenturyLink's residential rate for Portland, including EAS, is \$16.28 per month.<sup>5</sup> The results in Oregon and Washington suggest that it would be a worthwhile exercise to thoroughly examine the methodology and results of the urban rate floor moving to over twenty dollars per month.

In addition, it simply doesn't seem to make sense to use an urban *average* (assuming it was properly determined) to determine a *floor* used to reduce federal high cost funding. Since there are rates above and below the floor in urban areas, it seems that there should be some similar leeway in setting an urban rate floor. It may be appropriate to use a statistical measure, such as standard deviation, to determine a range within which rural rates should fit without

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<sup>4</sup> See, e.g., the *ex parte* letter from Ms. Shirley Bloomfield, Chief Executive Officer of NTCA-The Rural Broadband Association dated March 21, 2014 in Connect America Fund, WC Docket No. 10-90; High-Cost Universal Service Support, WC Docket No. 05-337; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition; Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Docket No. 12-353; Technology Transitions Policy Task Force, GN Docket No. 13-5 discussing rate comparability in the context of disparate calling scopes.

<sup>5</sup> The \$16.28 per month includes the Oregon state universal service fund assessment of 8.5%. Washington does not have a similar state USF assessment. Neither state has implemented a state SLC.

reductions in universal service support.

2. The Commissions past actions created financial uncertainty for rate-of-return carriers, a situation which the Commission's actions under this FNPRM can address.

Rural rate-of-return carriers are facing a very difficult business environment. Because of uncertainty on how the Commission's existing reforms will ultimately play out, the ability to attract capital has greatly diminished for many rural rate-of-return carriers. Some rural rate-of-return carriers now find themselves in technical default under their RUS borrowing. This is a direct result of continuing loss of customers<sup>6</sup> and diminution of federal universal service support.<sup>7</sup> Because of this difficult environment, the Western Associations urge the Commission to be very specific and detailed in determining the effect that further reforms may have before adopting those reforms and that the Commission not adopt those proposed reforms that will create greater financial uncertainty. In an uncertain financial climate, it is the customer that ultimately suffers when new investment is curtailed. Service levels diminish as old plant becomes unreliable and new services are not introduced if it is unclear how the investment for those new services will be recovered.

The Commission has the opportunity with its actions in response to this FNPRM to take steps to create a more positive environment for rate-of-return carriers and their customers. A more positive financial environment is more conducive to attracting and retaining capital investment. That, in turn, means a positive environment will allow rate-of-return carriers to provide high quality service to customers. A positive environment will advance the public policy goals of extending access to broadband at increasing download speeds in rural areas.

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<sup>6</sup> Although not a part of the FNPRM, continued rural call completion issues are creating unhappy customers and unhappy customers look for alternatives.

<sup>7</sup> Removal of the Quantile Regression Analysis as a "reform" tool will help this situation. However, while a positive step forward, that one act is not the cure.

The Commission should consider each proposed reform in the context of whether it helps or hurts the achievement of broadband access and deployment goals and whether it helps or hurts delivery of service to customers.

3. Increasing download speeds is appropriate if funded.

In the FNPRM, the Commission proposes increasing minimum broadband speeds that the Commission seeks to achieve with universal service funding to 10 Mbps downstream.<sup>8</sup> The Commission also seeks comment on whether to increase the upstream speed requirement to something higher than 1 Mbps.<sup>9</sup> The purpose for seeking comment on both proposals is expressed by the Commission as, among other things, seeking information on the consequences and tradeoffs involved in raising the standards including the ability to preserve and advance broadband service for consumers within the Connect America Fund (CAF) budget.<sup>10</sup>

The Western Associations support the move of the minimum downstream speed standard from 4 Mbps to 10 Mbps if the change is expressly recognized as one that will be supported by and implemented through the CAF for rural rate-of-return carriers or some other explicit funding source. Although anecdotal, many members of the Western Associations report customer demand and support for download speeds above 4 Mbps. However, it must be recognized that this change comes with a price. It is not possible to continue to increase service levels and require greater investment while not increasing the budget to do so. Robbing Peter to pay Paul is not a viable concept. The USF/CAF budget should increase accordingly.

On the second question, there does not appear to the Western Associations' members to be a great deal of consumer demand for upload speeds greater than 1 Mbps. In addition, the

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<sup>8</sup> FCC 14-54 at Paragraph 138.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

members of the Western Associations report that there are significant costs involved in increasing the upload speed above 1 Mbps. The cost of broadband deployment would become more expensive than it should be reasonably expected for consumers to bear. This means that inordinate upward pressure on the CAF may be created by moving above the 1 Mbps upload standard. If the Commission is nevertheless inclined to move in the direction of increasing the upstream minimum capacity standard, those costs should be fully funded through the CAF or another explicit funding source.

4. The Commission should give consideration to restoring carriers that have "fallen off the cliff."

In the FNPRM, the Commission proposes to change the manner in which the index cap for high cost loop support (HCLS) is handled.<sup>11</sup> As the Commission states, one advantage of doing so is that carriers presently close to the national average cost per loop will no longer face the risk of "falling off the cliff" in terms of the receipt of HCLS support.<sup>12</sup> This proposal has merit and should be adopted. In addition, the Western Associations request that the Commission consider relief for those carriers that in the past have "fallen off the cliff." In some cases, there has been a very significant loss of HCLS support.

5. The Commission should not adopt the proposal that after a date certain new investment may not be recovered in those areas also served by "qualifying competitor" through HCLS and ICLS.

The Western Associations think that the proposal to not allow recovery of new investment through HCLS and ICLS in areas where there may be a qualifying competitor present<sup>13</sup> is a bad idea. There are many significant issues related to the concept of an area served by a qualifying competitor. First, is it sufficient that the qualifying competitor serve only one

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<sup>11</sup> FNPRM at ¶ 261 and 262.

<sup>12</sup> Ibid.

<sup>13</sup> FNPRM at ¶ 263.

customer in the census block and yet support for new investment is lost for service to all the rest of the customers? Does the qualifying competitor even have the facilities or the intention to serve the other customers in the area? Cable companies typically stop their networks where it is uneconomical to build. If they stop their network one or two customers into a census block, the Commission would be setting up a situation where support is necessary to serve customers, but where support would be cut off. Is it appropriate for a qualifying competitor that is receiving support to continue to receive such support if support for the incumbent local exchange carrier is limited? What if the service provided by the ILEC is superior in quality or speed or other attributes? Why use census blocks as the test area?<sup>14</sup>

This proposal will be extremely difficult to administer. The only conceivable way of administration would be the posting information concept contained in paragraph 265 of the FNPRM. Otherwise, the ILEC is subject to second guessing.

Further, such restrictions on support appear to run counter to the concept of seeking to further deploy facilities for the provision of broadband service at increasing download speeds. When a qualifying competitor can pick and choose which customers to serve and does not take on an obligation to serve the entire area, the goals of the Commission for advancing broadband would appear to be in endangered by proposals that limit an ILEC making further investment. In the end, if the Commission adopts this proposal, the Commission may be taking action which ultimately prevents its public policy goals from reaching fruition.

6. The Commission should not continue or expand the hundred percent overlap concept.

A related concept in the FNPRM to limitation of recovery of new investment in areas

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<sup>14</sup> It is inconsistent to propose large areas (state-wide versus study area) as a means to curtail the theoretical opportunity for gaming by ILECs in the ITTA Plan, and propose smaller areas (census block versus study area) which can be gamed by competitor where the goal of the Commission appears to be limiting recovery of new investment.

where another provider has service is the concept that if there is one hundred percent overlap by a qualifying competitor there is no support for the ILEC. The question that is raised in the FNPRM is whether the Commission's existing rules about one hundred percent overlap should be expanded from the unsubsidized competitor<sup>15</sup> to include the "qualifying competitor."<sup>16</sup> The whole concept of one hundred percent overlap is fraught with uncertainty. Many times it can appear as though there is one hundred percent overlap, but there really is not. In addition, there is no consideration given to quality of service. There may be overlap, but the quality of service is clearly inferior. Is it in the customer's interest to adopt proposals that promote lower service levels -- clearly not.

Further, the qualifying competitor, even if it does overlap the ILEC, still has the choice of whether to serve a particular customer or not and when to exit the market it currently serves. Today, the ILEC has a continuing obligation to serve every customer that it can reach, whether or not the service to that customer will produce sufficient revenue to cover the cost of service. This is the carrier of last resort (COLR) obligation.

The Western Associations are not arguing that COLR obligation should be eliminated for ILECs as a stand-alone principle. However, if the Commission continues with the concept that one hundred percent overlap by a qualifying competitor means no support for the ILEC,<sup>17</sup> then there is no other choice but to eliminate the COLR responsibility for the ILEC. To not do so would be an unfunded mandate for the ILEC continue to serve those areas that are uneconomic

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<sup>15</sup> The notion of an unsubsidized competitor should be removed from rules and not replaced by the qualifying competitor. There really was no such thing as an unsubsidized competitor. The competitors, such as cable companies, use revenue from urban areas to subsidize service in rural areas. In addition, those companies often have higher rates in areas without cable competition (thus, higher margins) than in areas with cable competitors. The obvious point is that cable revenues are subsidizing telecom services.

<sup>16</sup> FNPRM at ¶ 266.

<sup>17</sup> If the Commission does continue to employ this concept, the qualifying competitor should lose its support as well.

to serve. It is just not logical to expect the qualifying competitor to voluntarily serve the least profitable (guaranteed loss) customers. It is also illegal to require the ILEC to serve those areas without proper and sufficient support. If the COLR obligation continues for the ILEC, but no support is provided, the likely result will be financial ruin for the ILEC or abandonment of service by the ILEC and most likely no service for the economically unsustainable customers.

7. The Commission should exercise great caution in adopting longer-term reforms for rate-of-return carriers.

For longer-term reform for rate-of-return carriers, the Commission is proposing several measures. First, the Commission is seeking comment on a proposed rule under which no new investment would be included in cost studies used for the determination of HCLS or ICLS after a date certain, and HCLS and ICLS would become the mechanisms to recover only past investment occurring prior to that date certain.<sup>18</sup> The concept is that all new investment would be recovered through a new Connect America Fund for rate-of-return service areas. The Commission states that this new fund would be "specifically designed to meet the Commission's overall objective to support voice and broadband-capable networks in areas that the marketplace would not otherwise serve and to ensure that consumers in rural, insular and high-cost areas have access to reasonably comparable services at reasonably comparable rates to consumers living in high-cost [sic] areas."<sup>19</sup>

The Western Associations do not argue against the logic of the Commission's goal to move ILECs from the mechanisms of the past designed to support voice service to a new mechanism designed to support broadband networks. However, the Western Associations caution the Commission to be very careful in its design of this transition. Given how much

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<sup>18</sup> FCC 14-54 at Paragraph 267.

<sup>19</sup> FCC 14-54 at Paragraph 267. Obviously, the reference was meant to be "urban" areas.

uncertainty is already in the market place and the effect this has on rural rate-of-return carrier's ability to obtain capital and provide customers with high quality services, the Commission must take steps to be sure that the milestones it establishes are carefully spaced and clearly designed. The effect of the transition steps must be fully vetted and the details thoroughly and clearly expressed. As part of this process, the Commission should give strong consideration to the Data-Only Broadband Support Mechanism developed by the Rural Associations.<sup>20</sup> Only by proceeding carefully and thoughtfully will customers benefit.

The Western Associations are pleased to see that the Commission appears to recognize this need for clearly articulated and carefully thought out mileposts for the transition. As stated in paragraph 268 of FCC 14-54, the Commission writes: ". . . we would not implement the limitation on recovery of new investment through the existing mechanisms until the new Connect America Fund was in place and operational." The importance of this condition cannot be overstated. Here is the Commission's opportunity to create a positive financial environment. An important factor in creating a positive financial environment is that the CAF must be sized to be sufficient to recover the cost of new investment. A positive financial environment benefits customers by enabling service to be secure and of high quality. A positive financial environment allows new services and increasing broadband capacity to be provided.

8. Rate-of-return Represcription Proceeding should be terminated.

As part of its call for comments in this FNPRM, the Commission asks "what action should the Commission then take in its pending rate-of-return represcription proceeding?"<sup>21</sup> The

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<sup>20</sup> See, Comments of NTCA-The Rural Broadband Association; the National Exchange Carrier Association, Inc.; the Western Telecommunications Alliance; and the Eastern Rural Telecom Association, In the Matter of Options to Promote Rural Broadband in Rate-of-Return Areas, WC Docket No. 10-90 (June 17, 2013).

<sup>21</sup> FCC 14-54 at ¶ 268.

answer is clear. For all the reasons related to financial uncertainty and as expressed in the Western Associations' prior comments on rate-of-return represcription,<sup>22</sup> the Commission should end the docket and take no further action on rate-of-return represcription. In addition, as pointed out by the Rural Associations, the Commission is currently headed down the wrong path, legally speaking, on rate-of-return represcription.<sup>23</sup> For this reason, if no other, the docket should be closed.

9. Review of changes to cost allocation rules should move slowly.

As another longer-term reform, the Commission is proposing that the cost allocation rules be modified to require the cost associated with multi-use facilities used to deliver broadband Internet access service be allocated between regulated and nonregulated activities based on an actual revenue allocator or a potential revenue allocator. In doing so, the Commission is seeking comment on what rules in Parts 32, 64 and or 69 should change.<sup>24</sup> This is an extraordinarily complex subject matter. Clearly, potential revenues should not be used as a mechanism. This would lead to all sorts of debate as to whether potential revenues should be set at a hundred percent penetration rate, ninety percent penetration rate, etc. The marketplace is a fickle environment and projections will invariably be wrong.

Even using actual revenues has a number of problems associated with it. Chief among these are which costs are to be allocated and how does one determine those costs. The Western

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<sup>22</sup> See, e.g., *In the Matter of Rate of Return Represcription Staff Report*, WC Docket Nos. 10-90, Comments of the Oregon Telecommunications Association and Washington Independent Telecommunications Association, July 25, 2013.

<sup>23</sup> Comments of the National Exchange Carrier Association, Inc.; NTCA-The Rural Broadband Association; USTelecom; Eastern Rural Telecom Association; and Western Telecommunications Alliance. *In the Matter of Connect America Fund*, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, WT Docket No. 10-208 (July 26, 2013) beginning at p. 34. See, also, the Reply Comments filed by the Rural Associations on that subject dated August 26, 2013.

<sup>24</sup> FCC 14-54 at ¶ 269.

Associations request that the Commission move very slowly and very deliberately in its consideration of these ideas.

10. The ITTA plan has value in its optionality.

The Commission calls for comment on the ITTA Plan.<sup>25</sup> The Western Associations are not going to comment on the elements of the ITTA Plan at this stage, except for one core concept. At the heart of the ITTA Plan is its optionality. Rate-of-return carriers can elect to utilize that plan or not. Any alternative regulation plan should include this concept of optionality. By studying the experience of the volunteers who step forward to opt into an alternative regulation plan, others can gain knowledge and understand the risks and benefits of such a plan. This optionality has significant value.<sup>26</sup> It is also important to understand how an alternative regulation plan affects those that do not opt into the plan; i.e., the effect on the USF or CAF budget.

11. Middle-mile costs should be supported, but not out of the existing budget.

The Commission calls for comments on whether middle-mile costs for rate-of-return carriers should be supported.<sup>27</sup> Support for middle-mile cost is a very significant issue for many rate-of-return carriers. To provide just one example, Pioneer Telephone Company is located in a very rural portion of eastern Washington where its choice of middle-mile providers is limited. Pioneer Telephone Company can provide 10 Mbps or greater of download Internet service to its customers with its existing facilities. However, because of the very significant middle-mile costs, it is economically unfeasible to provide that level of service at this time.

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<sup>25</sup> FCC 14-54 at ¶ 278.

<sup>26</sup> The recognition of the value of optionality and the knowledge that may be gained from carriers to choose an alternative regulation plan should not be confused with support for the ITTA Plan. More detail is needed before the Western Associations will feel comfortable enough to be able to take a position on the substance of the ITTA Plan.

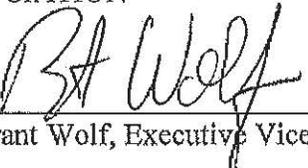
<sup>27</sup> FCC 14-54 at beginning at ¶ 300.

There is a clear need to support middle-mile costs for those rate-of-return carriers in isolated areas. However, that support should not come at the expense of other portions of the program. An additional budget should be established to support middle-mile costs.

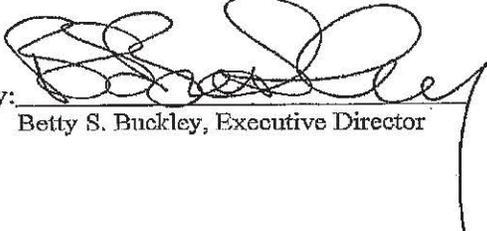
Thank you for the opportunity to comment.

Respectfully submitted this 8th day of August, 2014.

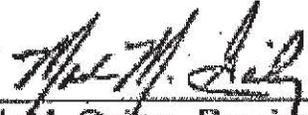
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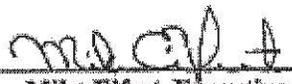
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