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 TCA

On June 10, 2014 the Federal Communications Commission ("FCC" or "Commission") released a Further Notice of Proposed Rulemaking ("FNPRM") in the above referenced dockets[1] seeking comment on further implementation on reforms to the Universal Service Fund ("USF") and the Connect America Fund ("CAF"). In particular, the FCC seeks comments on near term reforms for rate of return carriers ("RLECs") including modifications to the High Cost Loop Support ("HCLS") mechanism and principles for a standalone broadband support mechanism. The FCC also proposes to disallow recovery of investments made by RLECs in census blocks served by a qualifying competitor. The FCC also seeks comment on whether it should modify its

[1] Connect America Fund, WC Docket No. 10-90; Universal Service Reform – Mobility Fund, WT Docket 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; Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking (Rel. June 10, 2014) ("*FNPRM*").

definition of a competitor to increase the minimum broadband data speeds and include mobile, satellite and subsidized providers as qualifying competitors.

TCA applauds the FCC's efforts to improve the reforms adopted in the USF/ICC Transformation Order.[2] Indeed, the Seventh Reconsideration Order accompanying the FNPRM takes several important strides to ensure rural customers in RLEC areas are not left behind their urban counterparts.[3] Notably, the FCC rightly eliminated the Benchmark Rule, which utilized quantile regression analysis to determine investment and expense levels that would be eligible for recovery through the HCLS mechanism.[4] The FCC also reinstated Safety Net Additive support that had been retroactively denied to qualifying RLECs.[5] The FCC should continue this positive momentum by adopting policies that: 1) adopt the NTCA proposal for Stand Alone Broadband Support ("SABB"),[6] 2) not deny recovery for investments made by RLECs in "competitive" census blocks, 3) increase the minimum data speed in the FCC service quality standards for CAF recipients and competitors, 4) retain the current definition of a competitor, and 5) retain the current methodology for calculating HCLS.

TCA is a national consulting firm that performs financial, regulatory and marketing services for over one-hundred rural LECs and their affiliates. The vast majority of TCA clients are rate-of-return regulated in the interstate jurisdiction and offer traditional voice and broadband

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[2] Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov.18, 2011) ("*USF/ICC Transformation Order"*).
[3] *FNPRM* at Section VII.
[4] *Id.* at para. 131.
[5] *Id.* at para. 109.
[6] Comments of NTCA – the Rural Broadband Association, the National Exchange Carriers Association, Inc., Western Telecommunications Alliance and the Eastern Rural Telecom Association, WC Docket No. 10-90 (filed June 17, 2013) ("*NTCA proposal"*).

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.

I. The FCC should immediately adopt the NTCA plan for Stand Alone Broadband

As TCA has previously advocated, the FCC should adopt NTCA's proposal for a SABB mechanism without delay.[7] The FCC proposes that any SABB mechanism should: 1) remain within the existing rate-of-return budget, 2) distribute support equitably and efficiently, 3) distribute support on a forward-looking basis, and 4) ensure that no double recovery occurs.[8]

NTCA's proposal achieves these goals by striking an appropriate balance for providing support in an ongoing manner. First, the NTCA proposal shifts funding away from legacy USF mechanisms to a separate SABB mechanism, as customers choose to adopt broadband only connections.[9] This transition helps limit the need for additional funding over time. Second, the NTCA proposal substantially relies upon existing FCC rules resulting in an easy to understand, efficient and equitable mechanism by which to distribute support.[10] In fact, this method is superior to the FCC's proposal to transition future investment after a date certain to a new CAF mechanism for RLECs.[11] The NTCA proposal will gradually transition support away from legacy mechanisms naturally, using rules that are already familiar to RLECs and the FCC. In contrast, the FCC's hard cutoff date would be administratively burdensome, requiring complex accounting to separate expenses and revenues generated by the new facilities from the remainder of the network. Third,

[7] Comments of TCA. Connect America Fund, WC Docket 10-90 (filed June 17, 2013).
[8] *FNPRM* at para. 269.
[9] *NTCA proposal* at p. 8.
[10] *Id.* at Attachment 1
[11] *FNPRM* at para. 267.

by increasing the affordability of SABB, the NTCA proposal is forward-looking. SABB support allows customers to determine the services they wish to purchase, rather than maintaining perverse incentives to retain legacy services the customer may no longer want. Finally, the NTCA's proposal includes rule changes that ensure no double recovery between the legacy mechanisms and the new SABB mechanism. Specifically, the plan would shift loops away from Interstate Common Line Support ("ICLS") and HCLS calculations and contains a true-up process to ensure accurate distributions.[12]

One concern expressed by the FCC about this plan is the imputed $26 broadband subscriber line charge ("SLC") is not comparable to the $52.50 benchmark established in the CAF Phase II model ("CAM"). However, the FCC's contention appears to be based upon a misunderstanding of the NTCA proposal. The two benchmarks truly are not comparable. The $52.50 CAM benchmark imputes monthly revenues that price cap LECs should receive from their customers including all costs associated with providing internet service to the customer. On the other hand, the $26 SLC applies only to the regulated costs of providing broadband transmission service. The $26 SLC does not include any internet service provider or middle mile costs, which are essential for providing internet service to customers.[13] Therefore, the FCC's concern that the $26 SLC is too low is unfounded.

II. Investments by RLECs in "competitive" census blocks should be recovered through existing mechanisms

The FCC proposes to eliminate recovery for investments made by RLECs in areas served by a qualifying competitor after a date certain.[14] This ill-conceived proposal is very premature

[12] *NTCA proposal* at p. 6.
[13] *Id.* at fn. 14.
[14] *FNPRM.* at para. 263.

and would create more problems in the distribution of USF and CAF support to RLECs than it would solve.

The FCC correctly recognized in the Transformation Order that "served" areas are difficult to identify, as follows:

> [T]here are instances where an unsubsidized competitor offers broadband and voice service to a significant percentage of the customers in a particular study area (typically where customers are concentrated in a town or other higher density sub-area), but not to the remaining customers in the rest of the study area, and that continued support may be required to enable the availability of supported voice services to those remaining customers.[15]

The FCC also recognized that identifying served areas in RLEC areas had a far greater impact on these companies, and correctly only eliminated support in cases where the RLECs entire study area was served by an unsubsidized competitor.[16] The public interest will be served by retaining this policy. RLECs generally serve the highest costs areas in a region, and have a much greater reliance upon USF than price cap LECs. Additionally, RLECs have state mandated carrier of last resort obligations that require them to provide and maintain services to their customers. This necessarily increases their expense of providing service as they may not pick and choose their customers. Qualifying competitors, on the other hand, are not under any such obligation, they may cherry pick the locations they wish to serve and they may enter and exit a market at will. This inequality must be considered when determining policies that serve the public interest and the existence of a competitor should not disqualify a RLEC from recovering their legitimate costs of providing service. If the FCC were to adopt its proposal, the effect, in some instances, would be to strand rural customers in RLEC areas, leaving them on the wrong side of a digital divide within their own communities.

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[15] *USF/ICC Transformation Order* at para. 282.
[16] *Id.* at para. 283.

Finally, the FCC's proposed policy places the greatest burden of refuting claims of service by an unsubsidized carrier upon the RLEC. This should be reversed and the burden of proof should be reassigned to the carrier making such claims, as it has in the CAF Phase I and Phase II processes.[17] Further, the FCC's safe harbor proposal of a 90 day notification of intent to deploy broadband in an area is unreasonable.[18] Future investment plans are confidential and competitively sensitive so by providing competitors a 90 day window into a RLECs build-out plans, it puts the RLEC at a disadvantage by tipping their hand to other potential providers in the area. In addition, the FCC does not specify what competitors must do to "respond" which leaves these plans open to interference by fly-by-night providers. Instead, with USF support at stake, qualifying competitors should have the burden proof that an area is served, not RLECs. Finally, "unsubsidized competitor" service area claims could be addressed by state commissions, not the FCC.[19] State commissions are more in tune with circumstances "on the ground" within their state, potentially putting them in a superior position to determine whether customers truly are served by competitors.

III. The FCC should increase the data speeds for public service obligations

The FCC makes a compelling case to modify its public interest obligations for eligible telecommunications carriers ("ETCs") by increasing the minimum supported downstream data speed from 4 Mbps to 10 Mbps and to apply this definition to qualifying competitors as well.[20] As the FCC notes, the majority of urban consumers have access to broadband at significantly higher speeds than the current standard of 4/1 Mbps.[21] The FCC correctly points out that these minimum

[17] Connect America Fund, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211.
[18] *FNPRM* at para. 256.
[19] The 1996 Telecommunications Act assigned competitive ETC designations to state commissions in most cases.
[20] TCA does not oppose the increase of the upstream speed from 1 Mbps to 2 Mbps.
[21] *FNPRM* at paras. 140-141.

service standards will be in place for some time, and therefore, were it to retain the current standard, these areas would be continuously "playing catch up" to the rest of the nation. Therefore, by increasing the speeds as proposed, the FCC will ensure that rural consumers are fully able to participate in the nation's economy and improving our ability to compete globally. Therefore, TCA supports the FCC's proposal to increase the minimum supported download data speed to 10 Mbps and to apply this standard to ETCs and qualifying competitors.

IV. The FCC should retain its existing definition of a competitor

The FCC's proposal to change its definition of a competitor to include mobile or satellite service providers as qualifying competitors to fixed terrestrial broadband is not supported by the record. As TCA and others have argued in the past, mobile service is complementary to and not a replacement for fixed voice and broadband service.[22] Indeed, the FCC recognizes that many questions must be answered before it could consider mobile service functionally equivalent to fixed service for CAF Phase II.[23] Similarly, the FCC and others have rejected the efficacy of satellite for providing broadband with latency suitable for real-time communication.[24] NTCA recently filed a White Paper showing that, contrary to satellite provider claims, satellite is not functionally equivalent to terrestrial service, especially in northern locations.[25] During a recent

[22] Comments of TCA Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (April 18, 2011) at p. 15.
[23] *FNPRM* at para. 156.
[24] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., FCC 14-54, para. 90 (June 10, 2014); *see also* Connect America Fund, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060.
[25] Vantage Point, Analysis of Satellite-Based Telecommunications and Broadband Services (November 2013), attachment to Letter from Michael Romano, NTCA – The Rural Broadband Association, to Marlene H. Dortch, FCC, WC Docket No 10-90 (filed November 7, 2013).

hearing on the Rural Broadband Experiments, a witness from the California Public Utilities Commission asserted that, due to its latency limitations, satellite is not considered broadband service in that state.[26] All of these points should exclude mobile and satellite service from qualifying as a competitive service at this time.

The record also does not support the inclusion of subsidized competitors as qualifying competitors. The FCC recognizes that there is no certainty that a subsidized competitor will continue to serve their entire footprints at the current levels of service and pricing without future support, and assuming this to be true would put consumers at risk of losing their broadband service.[27] The FCC correctly excluded these entities in the USF/ICC Transformation Order, recognizing that support should be available to all areas that would lack voice and broadband service but for sufficient support.[28] The presence of only subsidized competitors would appear to indicate that the area requires CAF or USF support to ensure customers are served. Therefore, the FCC should abandon this proposal. At a minimum, the FCC should only apply this definition to CAF Phase II areas. Finally, this policy should never include any competitor affiliated with RLEC, as most RLECs offer retail broadband service through an affiliated company.[29] These non-regulated affiliates can also offer other services, including mobile or fixed wireless – and can overlap the RLEC's certificated service area. Therefore, the FCC should exclude these entities from the definition of a qualifying competitor, as their presence in a market is not a true indicator that the area is sufficiently low cost to support network deployments without USF support.

[26] Statement of Catherine Sandoval, Commissioner, California Public Utilities Commission (March 19, 2014), http://www.fcc.gov/events/rural-broadband-workshop (beginning at 210:11). Retrieved August 6, 2014.
[27] *FNPRM* at para. 176.
[28] *USF/ICC Transformation Order* at para. 118.
[29] RLECs typically offer broadband transmission service under Title II as an interstate regulated service.

V. The FCC should not change the current method for implementing the HCLS cap

The FCC states that although it has eliminated the Benchmark Rule, it is still concerned with the "race to the top incentives" under the current HCLS mechanism.[30] Accordingly, the FCC proposes to modify the method in which HCLS is "capped."[31] Specifically, the FCC proposes freezing the national average cost per loop ("NACPL") and instead adhering to the funding cap by reducing the current 65 percent and 75 percent reimbursements in the HCLS algorithm.[32] The FCC contends that this would spread the reductions in support more proportionately and keep RLECs from "falling off the cliff" as the NACPL rises. The FCC's proposal does not reduce HCLS, it simply reallocates the funds between RLECs.

TCA opposes the FCC's proposal for several reasons. First, the FCC's proposal is unnecessary. The FCC has retained its overall funding cap of $250 per line per month, which is more than sufficient to eliminate a "race to the top." This policy alone ensures that RLECs invest "efficiently."

Second, the FCC's proposal, which impacts RLECs serving areas with higher costs disproportionately, is retroactive. By applying this rule change to current disbursements, the FCC is effectually applying this rule to investment decisions made two or more years ago. RLECs have made significant investments in broadband facilities in very high cost areas over the past several years and these are the very same RLECs that will bear the brunt of this policy change. The impacted RLECs have also borrowed millions of dollars to finance these broadband facilities with the understanding that funding would be available to repay these loans. The FCC's proposal to reallocate HCLS funding places these loans in jeopardy.

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[30] *FNPRM* at para. 259.
[31] 47 C.F.R. § 54.1302.
[32] *FNPRM* at para. 262.

Finally, reductions in the percent of costs recovered by HCLS unfairly penalizes RLECs that have made strides to provide broadband to customers and in some instances will reward companies that have failed to do so. As described above, RLECs recover costs for **prior** investments through the HCLS mechanism. Therefore, RLECs that receive higher levels of HCLS are frequently those same companies that have made investments to bring broadband to their customers in accordance with the FCC's goals.[33] Indeed, the FCC has recognized that RLECs generally have done a commendable job of deploying broadband, which is due in large part to the incentives to invest within the HCLS mechanism. In a counterintuitive "plot twist", the FCC proposal has the potential to redistribute funding away from RLECs that have invested in their communities and give it to those that have not. Broadband capable network investments in rural areas are expensive and the USF is intended to offset those costs to ensure all customers in rural areas have access to telecommunications and information services.[34] By reducing support to the highest cost companies the FCC is essentially penalizing RLECs for attempting to meet the FCC's stated goals. TCA strongly encourages the FCC to reconsider this proposal.

VI. Conclusion

TCA continues to support the FCC's intent to modify the implementation of USF and CAF reforms adopted in the USF/ICC Transformation Order. The FCC will be most successful in meeting its goals by: 1) quickly adopting the NTCA proposal for a SABB mechanism, 2) allowing for RLEC recovery of investments in competitive census blocks, 3) increasing the minimum data speeds for public service obligations while 4) retaining its other elements of the definition of a qualifying competitor, and 5) retaining the current structure of the HCLS mechanism.

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[33] *USF/ICC Transformation Order* at para. 17.
[34] 47 U.S.C. § 254(b)(2).

Respectfully submitted,

[electronically filed]

TCA, Inc.-Telcom Consulting Associates
526 Chapel Hills Drive, Suite 100
Colorado Springs, CO 80920
(719) 266-4334

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