

**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
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**Reply Comments of GVNW Consulting, Inc.**

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## **EXECUTIVE SUMMARY**

Given the fact that the FCC staff has worked on developing a model that applies to the operations of only 13 price cap carriers over the last four years, it is understandable that they do not want to hear that a lot of work remains. But those are the facts and they cannot be wished away. In their comments at page 9, CenturyLink succinctly captures the essence of the problem if such a model is to be applied to rural rate-of-return carrier study areas by observing that cost data modeled in CACM are “reasonable estimates on average, but they cannot accurately estimate costs for any given location, node, or network route because of variances between modeled and real world conditions. Additionally there necessarily will be differences between the [Connect America Cost Model] modeling and actual network deployments because a significant number of high-cost locations in the model are based on statistical algorithms or have changed since the last Census.”

We believe that both federal and state regulators should establish at least a baseline set of service performance metrics in order to gauge provider performance regarding the performance of universal service obligations. To do otherwise would be a tacit admission that the starting gun for the “race to the bottom” has been fired. We recommend that the burden should be on the asserting competitor as opposed to placing the burden on the incumbent to refute the assertions and allegations of the unproven potential competitor.

If the Commission truly intends to not revisit the \$2 Billion artificial annual budget cap until 2017, then in the interim rural carriers impacted by middle mile capacity constraints should not be unfairly penalized for providing service in a location that is vital

to the provision of the agricultural and natural resource inputs that help feed the nation and fuel our cars and warm our homes.

The Commission attempts to finesse its \$2 Billion annual USF budget dilemma at paragraph 144 by defining a reasonable request as “cost-effectively extend a voice and broadband-capable network” based on the level of expected end-user revenues from the voice and retail broadband Internet access services that will be offered plus anticipated universal service support. We believe that any definition of reasonable request will only work if there are truly clear guidelines governing reasonable requests and if it is coupled with the **availability of predictable and sufficient funding**. Increased speeds will not be achieved with clever definitions, nor excluding this category or that category. It will require a larger investment in the infrastructure in rural America if the Commission desires to meet the requirements of the current federal law.

Carriers refraining from choosing this optional approach should not be negatively impacted by budget parameters that occur when other companies choose the optional model plan. Given the difficulties in developing a model-based plan for rural carriers and the length of time it may take for such a plan to be completed and offered to rural carriers, support may be frozen for a significant time period. These smaller incumbent LECs are situated much differently than price cap LECs, and the Commission needs to account for the materially different conditions under which they operate.

## **Introduction and Background**

GVNW Consulting, Inc. (GVNW) submits reply comments filed pursuant to the Commission's *Further Notice of Proposed Rulemaking*<sup>1</sup> (FNPRM) (FCC 14-54), released on June 10, 2014. In the *FNPRM*, the Commission seeks comment on a variety of issues, including issues emanating from the Seventh Order on Reconsideration. As the Commission stated at paragraph 10, it proposes a series of “*measures to update and further implement the framework adopted by the Commission in 2011.*”

GVNW 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. We are pleased to have the opportunity to offer reply comments addressing the issues the Commission has raised in the *Omnibus Order* and posed in the *FNPRM*.

We have crafted our reply comments in this filing to support the definition in the current law (254(c)(1)) of universal service as an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. We agree with the statement offered by the United States Telecom Association (USTA) at page iv of their comments: “*Similarly, rate-of-return carriers, finally freed from the unpredictable constraints of the Quantile Regression Analysis, but with a new broadband*

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<sup>1</sup> *Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration and a Further Notice of Proposed Rulemaking (Omnibus Order)*, WC Docket Nos. 10-90, 14-58, 07-135; WT Docket No. 10-208; CC Docket No. 01-92, FCC 14-54 (rel. June 20, 2014) (*FNPRM*).

*obligation, have a pent up demand for new investment, but remain concerned about predictable cost recovery because of the absence of a CAF attuned to their needs.”*

The time is right for the Commission to remove this uncertainty. As USTA notes at page 50 of its filing, citing the Further Notice at paragraph 157: *To plan a network, recipients of support need to know ahead of time what will be expected of them.* USTA then continues with: *“That expectation should be specific and realistic. It should be unchanging throughout the term of the obligation assumed by the recipient of support and accompanied by terms that allow financially feasible design and buildout.”*

Some key facts have been ignored based in large part on the National Broadband Plan and the resultant Transformation Reform Order (TRO) over-reliance on wireless technology to meet rural service metrics. These facts are that there are significant differences between wireline and wireless platforms, as evidenced by the filings that wireless carriers themselves have placed in the record. Simply stated, we respectfully submit that the broadband future for our country must sustain both wireless mobility AND a strong foundation of a fiber backbone network.

**AN EVOLVING MODEL THAT MIGHT WORK FOR RURAL CARRIERS  
WILL REQUIRE SIGNIFICANT WORK ON THE PART OF THE BUREAU  
STAFF AND THE INDUSTRY**

Given the fact that the FCC staff has worked on developing a model that applies to the operations of only 13 price cap carriers over the last four years, it is understandable that they do not want to hear that a lot of work remains. But those are the facts and they cannot be wished away. In their comments at page 9, CenturyLink succinctly captures the essence of the problem if such a model is to be applied to rural rate-of-return carrier study areas, by observing that cost data modeled in CACM are *“reasonable estimates on average, but they cannot accurately estimate costs for any given location, node, or network route because of variances between modeled and real world conditions. Additionally there necessarily will be differences between the [Connect America Cost Model] modeling and actual network deployments because a significant number of high-cost locations in the model are based on statistical algorithms or have changed since the last Census.”*

The problem is even more acute for the majority of rural carriers that do not enjoy the economies of scope and scale that are present at CenturyLink and enable some form of internal averaging to occur.

## **THE INDUSTRY PLAN PROVIDES A MORE TIMELY AND CERTAIN PATH TO ACHIEVE THE COMMISSION'S STATED GOALS**

A major item left open from the “promises” of the TRO is the path for rural carriers to transition from legacy support to a new regime. While the staff of the Commission has certainly been fully engaged<sup>2</sup> in implementing the Transformation Order, much work remains to be done and it must be done with an abundance of caution. The Industry proposal fills the need for a transition mechanism from legacy support.

In their comments at vii, the United States Telecom Association (USTA) supported the filing of the Rural Associations in the following excerpt:

*The RLEC Plan, as modified by the Rural Associations' filing today, meets the Commission's stated objectives and does so in a way that can be operationalized and therefore can be more rapidly implemented. The RLEC Plan fits within the Commission's budget framework. In addition to the rough offsetting of increases in the broadband-only fund by decreases in the HCLS and ICLS mechanisms and the decline in HCLS based on the operation of the Rural Growth Factor, the Rural Associations are proposing a mechanism that will ensure conformance with the high-cost budget allocated to the areas served by rate-of-return carriers. The mechanism will size the broadband-only to ensure that it, plus the total of HCLS and ICLS, fits within the Commission's budget.*

If the Commission is seeking an implementable near-term solution, USTA offers this summary thought at page 34 of its comments: *Measured on how long the transition will take, whether it is practical and administrable, and its effect on broadband investment, the RLEC plan is superior to the approach laid out in the Further Notice.*

(Footnote omitted)

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<sup>2</sup> We note that with the “non-numbered” orders that addressed important items of explanation or clarification on various aspects of the *Transformation Order*, the count is actually approaching two dozen documents issued subsequent to November 18, 2011. This equates to a document roughly every 41 days, nearly once every six weeks.

## **THE BURDEN OF PROOF IS MISPLACED ON COMPETITIVE ENTRY PROPOSALS**

The Commission is now proposing that competitors can just show up and with generalized assertions become a qualified competitor. Before it proceeds with the track of pursuing a “qualified competitor” designation, the Commission must address substantial public interest questions. In our comments, we offered three areas of analysis: performance, public safety<sup>3</sup> and accountability. Several other commenters touched on similar issues.

### Performance

Support recipients should meet standards for universal service on a sustainable basis. In our comments, we offered that both federal and state regulators should establish a baseline set of service performance metrics in order to gauge provider performance regarding the performance of universal service obligations. CenturyLink agreed with that type of an approach<sup>4</sup> from a price cap perspective, suggesting at page 12 of their filing that: *“The broadband speed that the Commission selects to support in CAF II eligible areas should also be the broadband speed that the Commission requires an unsubsidized provider to provide in order for an area to be ineligible for CAF II.”*

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<sup>3</sup> In the important realm of public safety oversight, regulators need to ask the question as to whether the provider is able to sustain performance metrics especially with respect to public safety. At a minimum, compliance should be achieved for access to 911 or enhanced 911 network requirements; call completion requirements (as rural customers not being able to receive calls will in some cases be a safety issue); Communications Assistance for Law Enforcement Act (CALEA) responsiveness; and Customer Proprietary Network Information (CPNI) requirements.

<sup>4</sup> It is reasonable that a potential competitor should be required to provide information specific to its service locations and not just a blanket assertion that it “covers the area in question.” The standards that will ultimately be applied to rural rate-of-return territory should be at least as robust as the criteria in place for the price cap CAF Phase II program.

## **MIDDLE MILE ENHANCEMENT IN SOME AREAS REQUIRES IMMEDIATE ATTENTION NOW**

At paragraph 3, the Commission states that “*Meeting the infrastructure challenge of the 21<sup>st</sup> century will be a multi-year journey. . . Achieving universal access to broadband will not occur overnight.*” The cost, or in some cases, lack of access to middle mile backhaul is a vital component of a rate-of-return carrier’s ability to provision a broadband platform to its customers at rates and speed levels that are reasonable comparable to urban service packages.

The problem is especially acute in Alaska<sup>5</sup>. As the Alaska Rural Coalition noted at pages 42 and 43 of their comments: *Middle mile infrastructure represents the largest impediment to the deployment of advanced telecommunications services in Remote Alaska. Significant investment must be made, both on the federal and state level, to build the needed network to connect Remote Alaska to the world.* (Omitted footnotes 180 and 181 from ARC filing)

If the Commission truly intends to not revisit the \$2 Billion artificial budget cap until 2017, then in the interim rural carriers impacted by middle mile capacity constraints should not be unfairly penalized for providing service in a location<sup>6</sup> that is vital to the provision of the agricultural and natural resource inputs that help feed the nation and fuel our cars and warm our homes.

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<sup>5</sup> As we noted in our comment filing at page 13: *While attacking the problem in \$10,000,000 increments may prove to be a Sisyphean effort when one studies the magnitude of the problem, we support for 2014-2015 the Commission’s decision to focus initially on supporting middle mile improvements for Alaska and tribal areas, then focus on other rural and remote areas.*

<sup>6</sup> Or as stated by The Deere & Company at page 1: “*customers whose work is linked to the land – those who cultivate, harvest, transform and enrich and build upon the land to meet the world’s dramatically increasing need for food, fuel, shelter and infrastructure.*”

## **FASTER SPEEDS REQUIRE BUDGET ADJUSTMENTS**

Parties that filed comments generally agreed with the Commission about the benefits of increasing the speed thresholds. The dispute comes with respect to how fast and who should pay<sup>7</sup> for it. For example, the Commission reinforces its self-imposed budget parameters at footnote 321, by seeking doing more with less in the following:

*Given the likelihood that required broadband speeds will continue to increase over time, we expect recipients of funding to deploy technologies capable of delivering faster speeds (and higher capacities) over time with limited additional investment.*

Americans are in general obsessed with speed. Whether it be cars, the wide receivers on their favorite football team, or their Internet downloads, we want it faster and we want it now. Reports such as Akamai's State of the Internet (Q1 2014 Report, Volume 7 Number 1) are devoted to speed comparisons with other countries across the globe to inform us how the US compares on a global stage. While comparisons are often apples and oranges with densely populated countries, comparisons are made nonetheless.

Relevant to the speed discussion at this point is the comparison between obsession<sup>8</sup> and commitment<sup>9</sup>. Many are obsessed with achieving a goal. The distinction is more often than not made by assessing the level of **commitment**. We believe that any attempt to achieve global level speeds will only work if there is the **availability of predictable and sufficient funding for all areas of the country, including high cost to serve areas**. The current \$2B budget parameters will work against this goal.

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<sup>7</sup> US Telecom noted at page 4 of its filing that there is a significant difference in the design and related costs of maintaining a 10 Mbps capable network platform.

<sup>8</sup> a noun – persistent preoccupation with an idea

<sup>9</sup> Defined as to be responsible for, to entrust, to place officially in custody of, and to pledge to a position. Such actions typically, and is the case here as well, require a sufficient commitment of financial resources.

**THE OPTIONAL MODEL-BASED PLAN SHOULD NOT BE ADOPTED  
UNTIL A MECHANISM IS IN PLACE TO ADDRESS THE IMPACT ON  
NON-ELECTING CARRIERS**

In our comment filing, we expressed multiple concerns<sup>10</sup> from the rural carrier perspective on the FCC comment at paragraph 278 that the “*ITTA has proposed the most comprehensive<sup>11</sup> plan in the record for such a transition (ITTA Plan).*” Several commenters shared similar concerns, including the American Cable Association as they noted in the second sentence of footnote 2 of their filing: “*These smaller incumbent LECs are situated much differently than price cap LECs, and the Commission needs to account for the materially different conditions under which they operate.*”

With respect to the concern we expressed at pages 15-18 of our comment filing about the length of time the proposed freeze for opting carriers could last, US Telecom agreed at page 47 of their comments in the following excerpt: “*Given the difficulties in developing a model-based plan for rural carriers and the length of time it may take for such a plan to be completed and offered to rural carriers, support may be frozen for a significant time period.*”

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<sup>10</sup> For example, it does not appear that the \$2 Billion annual budget cap is fully accounted for in the current version of the ITTA Plan with respect to industry equity. We asked: “Is the ITTA proposal “budget cap equitable” for the carriers that serve above average cost territory that do not now or might not ever fit into a model paradigm?”

<sup>11</sup> The Commission has proposed one significant change from the ITTA proposal: At paragraph 287, the Commission stated: “The ITTA Plan proposes to allow participating rate-of-return carriers to make an election on a study area-by-study area basis. We propose instead that participating carriers be required to make a state-level election to receive model-based support, comparable to what is required of price cap carriers. Such an approach would prevent rate-of-return carriers from cherry picking the most attractive areas in their study areas, potentially those areas where model-support is greater than legacy support, leaving the least desirable areas for a competitive process.”

In summary, carriers refraining from choosing this optional approach should not be negatively impacted by budget parameters that occur when other companies choose the optional model plan.

**THE PROPOSED NON-COMPLIANCE OPTIONS ARE A MORE APPROPRIATE LEVEL OF PENALTY**

Several parties agreed with our position<sup>12</sup> in the comment round supporting the Commission's proposed changes to the level of support reductions that result from failure to file certain mandated forms<sup>13</sup> at a date certain as a step<sup>14</sup> in the right direction. Under current sections 54.313(j) and 54.314(d), the penalties do not differ whether the filing is a day late or a month late. While we do not wish to understate the importance of carriers meeting their filing deadlines, this seems rather inequitable.

The current set of rules imposes the draconian penalty of missing an entire quarter of federal universal service support if the filing is one minute late. The Rural Association filing captured the challenge of human error in a manual filing process as stated at page 77 of their filing: *However, just like the military commands that become well prepared to fight the previous war but not the next one, these carrier procedures do a great job of preventing known prior mistakes but unfortunately cannot always anticipate the ingenuity of human beings in finding new and original ways to make a mess of things.*

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<sup>12</sup> Alaska Rural Coalition at pages 53-54; Rural Associations at pages 74-79.

<sup>13</sup> The annual section 54.313 reporting made via Form 481 is due on July 1 and the annual section 54.314 certification for use of support is due each October 1.

<sup>14</sup> It is curious that the FCC rules already in place found in section 1.80(b)(8) for failure to file required forms or information have not been used in this regard. Even if those rules were modified to increase the \$3,000 fine to \$5,000 or \$10,000, it would seem to be a more administratively efficient way to handle late filers.

GVNW Consulting, Inc.

Reply Comments in WC Docket Nos. 10-90, 14-58, 07-135; WT Docket No. 10-208; CC Docket No. 01-92  
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Respectfully submitted,

*s/ Jeffrey H. Smith*

*Via ECFS at 9/05/14*

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