

**Before the
Federal Communications Commission
Washington, DC 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 Inter-carrier Compensation Regime)	CC Docket No. 01-92

**REPLY OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby replies to the comments filed by ITTA – The Voice of Mid-Sized Communications Companies (“ITTA”) regarding the Petition for Reconsideration and/or Clarification (“Petition”)² filed by NTCA with respect to certain aspects of the Report and Order released March 30, 2016 in the above-captioned proceedings.³ With ITTA’s comments filed in support of several issues raised by NTCA’s Petition and no filings made in opposition to the Petition, the Federal Communications Commission (the “Commission”)

¹ NTCA is an industry association composed of nearly 900 rural local exchange carriers (“RLECs”). While these entities were traditional rate-of-return-regulated telecommunications companies and “rural telephone companies” as defined in the Communications Act of 1934, as amended, all of NTCA’s members today provide a mix of advanced telecommunications and broadband services, and many also provide video or wireless services to the rural communities they serve.

² Petition for Reconsideration and/or Clarification, WC Docket No. 10-90, *et al.* (filed May 25, 2016).

³ *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. March 30, 2016) (“*Rate-of-Return Reform Order*” or “*FNPRM*,” as applicable).

should proceed promptly to grant the relief sought by NTCA so that an orderly and well-defined implementation of the reforms adopted in the *Rate-of-Return-Reform Order* may follow.

In its Petition, NTCA identified several categories of issues for which reconsideration and/or clarification, as applicable, should be granted to allow the reforms adopted in the *Rate-of-Return Reform Order* to take effect in a manner that will maximize the likelihood that such reforms will promote robust, affordable, and sustainable broadband in rural areas regardless of whether a given RLEC adopts or declines Alternative Cost America Model (“A-CAM”) support. Among other things, NTCA suggested the Commission:

- (1) acknowledge and admit that the record of these proceedings confirms that the structure of the reforms, when combined with a lack of sufficient high-cost universal service fund (“USF”) support, will preclude most RLECs from offering standalone broadband service at reasonably comparable rates, and therefore either: (a) revisit the high-cost budget for RLECs to ensure sufficient support so that rural networks can be deployed and sustained and rural consumers (just like schools and libraries and low-income consumers) may pay affordable rates; or (b) at the very least and in the interim, suspend the requirement for RLECs to certify that they are providing standalone broadband services at reasonably comparable rates;
- (2) address concerns that denial of costs that are required by Commission rule to be assigned to regulated interstate services through USF budget controls and other “haircuts” will create an unlawful and unconstitutional regulatory “black hole” into which costs disappear, never to be recovered or even recoverable by operation of Commission rules;
- (3) “fix the footnote 141 problem” that will arise if an RLEC is permitted to spread the risk of its unilateral decision to elect and then back out of A-CAM support offers such that other carriers share the burden of the budget shortfall caused by that single carrier’s gamble;
- (4) clarify the type of information that a would-be competitor is required to present to meet the burden of proving that it can, in fact, serve 85% or more of the locations in a given census block with voice and broadband services at reasonably comparable rates and in conformance with requisite performance standards;
- (5) confirm that RLECs may choose freely from among any of the disaggregation methods identified in the *Rate-of-Return Reform Order* (in addition to seeking Commission approval for other methods); and

- (6) reconsider the requirement to impute Access Recovery Charges (“ARCs”) where an RLEC can show that it had a certain number of standalone broadband connections in place when the baseline for intercarrier compensation replacement cost recovery was first established.

ITTA comments with respect to four of the issues identified above, focusing specifically on the first, fourth, fifth, and six issues in that list. As to the first issue, ITTA “shares the concerns expressed by NTCA regarding the insufficiency of the current high-cost universal service fund budget.”⁴ Although ITTA does not urge any specific action as to this issue in its filing, the unrefuted evidence on the record as highlighted by NTCA’s Petition – evidence that was filed at the specific direction of and under the oversight of Commission staff – confirms that the reforms adopted by the Commission will unfortunately fail to achieve their goal of enabling rural consumer access to standalone broadband services at reasonably comparable rates.⁵ NTCA does not believe that this was at all the Commission’s goal, but this is the plain and unmistakable result. Thus, immediate action is needed in the form of a suspension of the “reasonable comparability” certification for standalone broadband services, paired with a proactive review of the USF budget needed for both non-model support recipients and model electors to ensure the deployment and operation of sustainable rural networks and that rural consumers can buy standalone broadband at reasonably comparably rates as provided atop such networks.

On the fourth issue, ITTA rightly comments that – even as the Commission adopted a “fairly robust” evidentiary process by which it will be determined if a would-be competitor – it

⁴ ITTA Comments at 2.

⁵ Petition at n. 10 (citing Letters from Regina McNeil, Vice President of Legal, NECA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Dec. 16, 2015; Dec. 15, 2015; Dec. 11, 2015; Dec. 2, 2015; Nov. 19, 2015; Nov. 17, 2015; Nov. 13, 2015; Nov. 6, 2015; Sept. 11, 2015)).

gave little, if any, direction on what sort of evidence the competitor must provide to demonstrate specifically that it serves 85% or more of the locations in a given census block.⁶ Indeed, ITTA properly highlights that the Commission looked and specifically cited to a NTCA/USTelecom filing that contained detailed proposals in deriving and adopting this standard,⁷ but then provided vague guidance indicating only that competitors should identify “neighborhoods” they serve, for example, in establishing how they calculated 85% or greater coverage. But, as NTCA explained in its Petition, even as the Commission called upon competitors to “submit as much information as possible,” an actual count of 85% can never be confirmed without greater precision as to *both* numerator (the actual number of housing units served by the competitor) *as well as* denominator (the total housing units in the census block).⁸ Put another way, claiming to serve only a “neighborhood” or even “franchise boundary” without specifically identifying precisely *which* housing units in that area are the purported served location must, by definition, be deemed insufficient information to establish 85% or greater coverage. Consistent with NTCA’s Petition and the comments of ITTA, the Commission should therefore require each would-be competitor – the party in the best position to produce such information – to come forward with the specific means and math by which it calculated and felt comfortable enough to certify under penalty of perjury that it is capable of serving 85% or more of the locations in a given census block.

⁶ ITTA Comments at 3.

⁷ *Id.* at n. 6 (citing *Ex Parte* Letter from B. Lynn Follansbee, Vice President, USTelecom, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Feb. 5, 2016), at 2).

⁸ As NTCA noted in its Petition, a particularly troubling example could arise whereby a competitor’s claim of coverage of 85% or more locations in a census block includes *business locations* when the measurement will be achieved by reference to *housing units*. Petition at n. 38. Such an example is precisely why greater transparency into both the numerator and the denominator are needed to confirm the would-be competitor’s claims.

With respect to the fifth issue in the list above, ITTA expresses support for NTCA’s concern about the lack of clarity in the *Rate-of-Return Reform Order* regarding an RLEC’s choice of the various disaggregation options spelled out therein. As ITTA notes, while prior disaggregation rules contemplated Commission oversight and potential rejection of disaggregation plans, such a structure was needed then because the plans were based upon broad methodologies rather than carefully prescribed formulas such as those the Commission has adopted here.⁹ There is thus no need for the Commission to “second-guess” an RLEC’s choice from among the detailed formulas spelled out in the order, and the Commission should clarify how it will administer the disaggregation options consistent with the recommendations of NTCA’s Petition.

Finally, ITTA urges the Commission to act on the sixth issue in the list above – reconsidering the imputation of ARCs on standalone broadband connections in place at the time the Commission established CAF-ICC support.¹⁰ Although NTCA understands why the Commission adopted a general imputation requirement – to avoid placing too much stress on CAF-ICC support specifically and USF budgets more generally – the fact is that standalone broadband connections in place at the time the CAF-ICC mechanism was established were never part of “the careful balancing of burdens” the Commission wishes to avoid upsetting now. NTCA urges the Commission to provide for a limited exemption from the ARC imputation requirement as described in the NTCA Petition and then work with NECA and the industry to confirm the number of connections at issue.

⁹ ITTA Comments at 5.

¹⁰ *Id.* at 6.

For the foregoing reasons, given ITTA's support on several of the issues raised in NTCA's Petition, and in light of the lack of opposition with respect to any other matters raised therein, NTCA respectfully requests that the Commission act consistent with the recommendations set forth in its Petition.

Respectfully submitted,



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