

**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
)	
Establishing Just and Reasonable Rate for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

REPLY COMMENTS OF USTELECOM

The USTelecom Association (USTelecom)¹ is pleased to submit these reply comments on the Commission’s Notice of Proposed Rulemaking (NPRM) adopted in conjunction with the Report and Order, Third Order on Reconsideration (Order) in the above-referenced proceeding (collectively, *Rate-of-Return Budget Order and NPRM*).² While USTelecom agrees with a majority of the comments in this proceeding there are two discrete proposals raised by the Wireless Internet Service Providers Association (WISPA) and NCTA – The Internet & Television Association (NCTA) that causes USTelecom members concern.³

¹ USTelecom is the nation’s leading trade association representing service providers and suppliers for the broadband innovation industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications and broadband services to hundreds of millions of customers around the world.

² See *In the Matter of Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rate for Local Exchange Carriers, Developing a Unified Intercarrier Compensation Regime*, WC Docket Nos. 10-90, 14-58 07-135 and CC Docket No. 01-92, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29 (Mar. 23, 2018) (*Rate-of-Return Budget Order and NPRM*).

³ Comments of The Wireless Internet Service Providers Association (WISPA), WC Docket Nos. 10-90, 14-58, 07-135 and CC Docket No. 01-92 (filed May 25, 2018) and Comments of the NCTA – The Internet & Television Association (NCTA), WC Docket Nos. 10-90, 14-58, 07-135 and CC Docket No. 01-92 (filed May 25, 2018).

In short, NCTA and WISPA both ask the Commission to utilize an auction format for future distribution of USF support.⁴ WISPA argues that the Commission should modify its mechanisms and use a reverse auction in all areas where there is significant but not 100% overlap,⁵ because they believe that utilizing an auction will enhance efficient distribution of universal service support in rural areas.⁶ NCTA agrees that an auction should be used in place of the current overlap challenge process because it would provide an administratively simpler way for non-incumbents to compete to receive high-cost support.⁷ Both associations support their argument for change of the current process by noting that the 100 percent overlap process has not resulted in as much participation by non-incumbents.⁸

The arguments made by both associations run counter to current FCC policy and are not supported by the facts. Firstly, the current overlap processes are well designed to meet the Commission's goal of ensuring support goes to the right places. Competitive carriers have the opportunity to prove that they cover a particular area by meeting the appropriate thresholds and making the necessary showing. As described in our comments⁹ in this proceeding the various industry associations worked hard to formulate consensus on many proposals during the 2016 Rate-of-Return Reform proceeding¹⁰ and one of those was how to account for areas where there is competitive overlap. Although the process that was adopted is a good one, it has yet to be implemented for cost-based rate-of-return providers. USTelecom specifically pointed out in our comments that the one of the ways the Commission could continue improve the predictability all

⁴ See Comments of WISPA at 1-3 and Comments of NCTA at 1-3.

⁵ See Comments of WISPA at 1-2 and 5-7.

⁶ See *Id.*

⁷ See Comments of NCTA at 2-4.

⁸ See Comments of NCTA at 4; See Comments of WISPA at 5.

⁹ See Comments of USTelecom at 2,10 and 21 (May 25, 2018).

¹⁰ See *Connect America Fund et al.*, WC Docket No. et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*2016 Rate-of-Return Reform Order*).

broadband providers need, would be to complete the competitive overlap proceeding it designed in the *2016 Rate-of-Return Reform Order*.¹¹

Other commenters such as GVNW also agree that the overlap processes the Commission has in place are carefully considered and designed rules and policy that should not be disturbed to find a solution for a non-existent problem, and in particular that, “the Commission offers no compelling reason in the *NPRM* to disturb the carefully balanced construct of its *2016 Rate of Return Reform Order* merely because it has yielded results that the Commission did not expect when adopting the 100 percent overlap rule.”¹² USTelecom agrees that the current overlap rules properly let the burden of persuasion rest on the competitor and requires evidence sufficient to show the specific geographic area in which the competitor is offering service. Changing the process at this juncture will not change the reality that there is very little competitive overlap.

GVNW also astutely points out that unnecessarily changing the competitive overlap rules in midstream discourages broadband investment.¹³ More specifically, GVNW notes that an auction mechanism has the potential to discourage investment by funding a potentially inferior overlapping network when a quality network, increasingly reliant on future-proof fiber facilities, and built based on current rules, is already in place. As has been the case in other regulatory proceeding carriers can be understandably reluctant to continue investing in fiber facilities when such long-term investment could be unsupported in the future. In the *2016 Rate-of-Return Reform Order* and in the current proceeding the Commission attempts to refine the current rules that create uncertainty about future levels of support and discourage investment, as such, it is

¹¹ See *2016 Rate-of-Return Reform Order* at 3132-3141.

¹² See Comments of GVNW Consulting, Inc. of Behalf of Illinois Rural Local Exchange Carriers (GVNW) WC Docket Nos. 10-90, 14-58, 07-135 and CC Docket No. 01-92 at 8 (May 25, 2018).

¹³ See *Id.* at 10.

incongruous to to create a new level of uncertainty by unnecessarily changing the competitive overlap process.

Secondly, auctions in and of themselves are no guarantee for success. For example, we have yet to see what will happen in the CAF II auction that begins this summer, so to rely on the auction process as somehow the best solution for getting funding to where it's needed may perhaps be jumping the gun. As ADTRAN notes in its comments, "it is not clear how competitive any such reverse auction might be, considering that the rate-of-return CAF program at issue here addresses "drips and drabs" of locations scattered throughout the rate-of-return carriers' territories."¹⁴

The Commission has already expressed concern about the "challenging" nature of the current proceeding on Commission staff, but still fails to address the potential burdens on the Commission of designing and implementing an auction process.¹⁵ ADTRAN aptly notes that while the use of an auction might reduce the required subsidy amounts, there has been no balancing of those potential gains against the delays, costs and complexity of designing and running an auction, as well as, the costs imposed on the auction participants.¹⁶ Even Commissioner O'Rielly recently lamented the cost of auctions and the lack of functionality of the Commission's current auction software, stating, "after spending approximately \$100 million per year on our auction program, we ought to have greater flexibility and functionality when it comes to our auction procedures."¹⁷ Without any evidence of any potential savings or efficiencies to the high-cost program the extraordinary work and expense involved seem to negate any benefits of taking this course of action. Additionally, commenters view the rate-of-return USF program as "the fastest and most efficient way to bring upgraded broadband services to the scattered locations in these carriers' territories,"

¹⁴ See Comments of ADTRAN, Inc., WC Docket Nos. 10-90, 14-58, 07-135 and CC Docket No. 01-92 at 6.

¹⁵ See GVNW Comments at 12.

¹⁶ See ADTRAN Comments at 6.

¹⁷ See Remarks of Commissioner Michael O'Rielly Before the American Enterprise Institute, April 19, 2018 at 2, available at https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0419/DOC-350335A1.pdf.

in part because rate-of-return carriers already have a presence in the rural areas, with established customer relationships and community partnerships, which aid in customer education and therefore, stand ready to provide for rapid deployment and upgrades;¹⁸ so looking to change the methodology to a more difficult, expensive and time consuming one now makes no sense.

Both NCTA and WISPA also argue that the Commission should utilize the existing FCC Form 477 data as a starting point for showing overlap and insists that is a reliable source of availability for this purpose.¹⁹ Unfortunately, the assumption that the FCC Form 477 is 100 % accurate is misleading. The challenge process is designed to ensure that competitive carriers are serving where they report that they are. Often times during the 100 percent overlap proceeding some claims of competitive coverage have been found to be inaccurate which indicates that relying on simple reporting is not always a good baseline. NCTA states that the Commission should target support only to areas where it is needed.²⁰ USTelecom agrees and as such the Commission should implement the existing overlap procedures already in place that were designed to do just that.

¹⁸ See ADTRAN Comments at 6.

¹⁹ See Comments of NCTA at 5; Comments of WISPA at 7.

²⁰ See Comments of NCTA at 4.

For the reasons discussed herein, as the Commission considers how to improve the Rate-of-Return high cost mechanisms, it should tread carefully and not adopt a new overlap requirement or shift to auctioning support, both of which would result in no additional benefits while disrupting the investment cycles of many rural providers. USTelecom and its members whole-heartedly support the Commission's initiative to ensure that the scarce resources of the USF program are used to their and highest use, but USTelecom asks the Commission to carefully consider the issues addressed herein so new rules do not become the source of unnecessary unpredictability in the ongoing process to close the digital divide.

Respectfully submitted,
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